Minor Offences

Read your rights. Know your options under the Provincial Offences Act.

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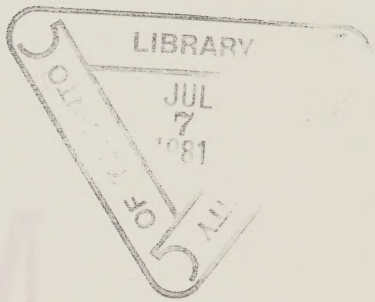
Minor Offences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A Message from the Attorney General

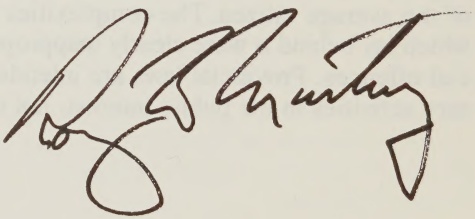
Many people have found the procedure which governs the prosecution of provincial offences confusing, expensive, time-consuming, and much too complex for the seriousness of those offences. The need to remedy this situation has resulted in the passage of *The Provincial Offences Act, 1979,* which for the first time creates a unified and self-contained code of procedure. Its objectives are to simplify previous practices, eliminate unnecessary technicalities, enhance basic rights and protections, and remove the obstacle of delay from the conduct of legal proceedings. It aims to give every defendant the most convenient opportunity for a trial on the merits of his case, and to be heard as quickly as possible. In addition, the Act seeks to institute effective means of collecting defaulted fines, rather than imposing imprisonment on those who do not pay.

The basic problem in dealing with minor offences against provincial laws, which are not in any real sense criminal acts, is that the traditional procedure was adopted by reference to the *Criminal Code* of Canada. As a result, technicalities and ceremonies which emerged from the special circumstances of past centuries have lingered on in today's courtrooms, to the bewilderment of the average citizen. The complexities of the procedure and the attitudes which lay behind it were clearly inappropriate for the vast majority of provincial offences. Provincial laws are intended to regulate legitimate and necessary activities in the public interest, not to punish criminal or immoral acts.

This system of criminal procedure also resulted in a serious problem of congestion in the operation of the provincial courts. The large volume of offences of a very minor nature, have aggravated the problem considerably. Extremely long delays became very common. The cost to the taxpayer of dealing with minor offences grew steadily higher, while members of the public, court officials, and law enforcement personnel wasted enormous amounts of time waiting for charges to be disposed of.

The Provincial Offences Act approaches these problems by providing a form of procedure which is appropriate for the nature of the offence. The simple and flexible procedure for truly minor offences will provide convenience to the person charged, without in any way diminishing his fundamental legal rights. Another set of procedures is provided for offences of a more serious nature, where the penalties are correspondingly greater. Trials for all offences under provincial laws will now be held in the new Provincial Offences Court, separate from cases of a criminal nature.

The Provincial Offences Act aims to ensure fair, expeditious, and inexpensive justice in Ontario. Your new rights and responsibilities are explained in this booklet. I hope that you will find it a useful aid to understanding them.



R. Roy McMurtry
Attorney General for Ontario

Two Distinct Forms of Procedure

The Provincial Offences Act recognizes that the nature and gravity of offences under provincial laws varies enormously. Penalties range from a few dollars to terms of imprisonment of up to five years. Approximately 90% of the offences which are brought to court are truly minor, regulatory matters for which the penalty imposed is a fine of less than $300.

The Act provides a means of separating the minor cases, which do not require the strictures of criminal procedure, from the remainder of serious offences, which include environmental protection matters, construction safety violations, securities trading offences, consumer protection offences, and the more serious driving offences. In distinguishing these two groups of offences, the Act establishes two separate procedural streams, Part I for minor offences, and Part III for major ones.

The Provincial Offences Officer and You

The Act creates a new appointment for enforcement officers who are entitled to use the new simplified procedures under Part I, the minor offence stream. Any person who is a provincial offences officer may commence proceedings, if he or she believes that one or more persons have committed an offence. All police officers are provincial offences officers for the purpose of the Act. Other law enforcement personnel, such as conservation officers or municipal law enforcement officers, may be designated as provincial offences officers by an Ontario cabinet Minister.

This appointment permits the officer to start proceedings by a more informal procedure. It is within the prosecutor's discretion, guided by the policies of his police force or Ministry, to decide how seriously an apparent violation should be treated. The courts retain a measure of control over this discretion because the new procedure can be used by a provincial offences officer only for offences which are specified by the courts in advance.

Any person, whether or not he is a provincial offences officer, may commence proceedings in the more formal manner under Part III. This requires the laying of an information before a justice. The justice will require the person who lays the information to swear that he believes it to be true, and may ask questions about the alleged offence.

All charges laid by one citizen against another will be commenced in this manner, since the complainant must satisfy the justice that he has reasonable and probable grounds to believe that an offence has been committed. This ensures that private complaints can be initiated only after a judicial decision has been made that there is some basis for a charge.

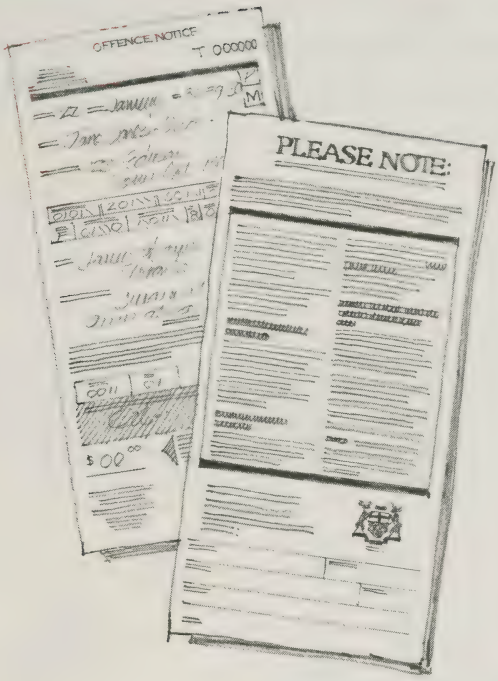
In all proceedings under the new Act, the person who has been charged with the commission of an offence is referred to as the defendant rather than the "accused." This change in terminology reflects the move away from criminal procedure towards a new procedure which more closely resembles civil procedure.

Part I Proceedings

The Offence

As stated above, the simplified procedure under Part I of the Act is intended for offences of a minor, regulatory nature. If a provincial offences officer believes that one or more persons have committed an offence, he may decide to complete a document known as a "certificate of offence." After he has signed it, he will give the person charged a document called an "offence notice," or a summons.

The Offence Notice



The offence notice looks like the summary conviction ticket, which has been in use in Ontario for many years. It contains the defendant's name, address, and driver's licence number, as well as a short description of the offence which he is alleged to have committed, and a set fine.

The provincial offences officer may serve the offence notice at the time when he finds a person committing the offence, or, he may serve the offence notice within 30 days from the date of the offence.

A provincial offences officer cannot under any circumstances accept money from a defendant as payment of the fine shown on the offence notice. Nor can he deliver the offence notice to the court office on the defendant's behalf.

In certain circumstances, a provincial offences officer may serve the person charged with a summons under Part I of the Act, instead of an offence notice. This document requires the defendant to appear at a trial, so that the justice may consider the circumstances surrounding the commission of the offence in deciding upon a suitable sentence, if he is found guilty. The defendant cannot pay a fine out of court when he has been served with a summons.

What should you do after being given an offence notice?

The Provincial Offences Act permits the person who has been given an offence notice (the defendant) to exercise one of the following options in response to the charge. You may choose the option which best suits your situation, but you must make the decision *within 15 days* of the date when you were given the offence notice:

1. If you do not wish to dispute that you committed the offence, you may sign the plea of "Guilty" on the offence notice. You may then enclose payment for the amount of the fine shown, and have it delivered to the court office together with the offence notice, either personally, by agent, or by mail. This procedure is the same as that which existed under the previous law.

2. If you wish to dispute that you committed the offence, you may sign the "Not Guilty" plea on the offence notice and deliver it to the court office. The court will set a time and date for a trial and inform both you and the prosecutor of the date and time. If you do not appear at the trial, you may be convicted in your absence and a fine and costs may be imposed.

3. If you do not wish to dispute that you committed the offence, but wish to explain the circumstances surrounding the incident, you may appear before a justice, at your convenience during the times indicated in the notice, at the court indicated on the offence notice. It is not necessary to make an appointment in advance. You may also explain to the justice why you feel that the fine should be reduced, or why the time for payment should be extended, but the court cannot reduce the charge.

What happens if you do nothing?

If you have not exercised one of the three options within 15 days after being given the offence notice, the court will assume that you do not wish to dispute the charge. A justice will then examine the certificate of offence which has been filed in the court office by the provincial offences officer. If the certificate has been properly completed, the justice will then enter a conviction and impose the set fine shown on the offence notice. The court clerk will send you a notice of the conviction and fine and the date when the fine is due.

This concept of a default conviction where the defendant takes no action in response to a charge is not new. It has been adapted from the concept of the default judgment in civil legal proceedings. Everyone retains his absolute right to a trial on the merits at his request. The only change is that now it is his responsibility to enter a plea of not guilty in writing before the trial is scheduled.

Fines and Other Consequences of Conviction

When the offence notice procedure has been used, the fine which is imposed cannot exceed $300, or the maximum penalty which the particular statute provides for that offence, whichever is the lesser. A term of imprisonment cannot be imposed for conviction of an offence when proceedings have been taken under Part I of the Act. For example, *The Highway Traffic Act* states that the penalty for defacing a serial number on a car is a maximum fine of $200 or imprisonment for up to 30 days, or both. If the proceeding has been taken under Part I, the fine cannot exceed $200 and the provision for imprisonment does not apply.

However, demerit points under *The Highway Traffic Act* will be recorded as a result of the conviction, and any things which were seized from the defendant before the offence notice was issued may be forfeited to the Crown. This will occur only if the statute which creates the offence provides for forfeiture. For instance, things used in the course of illegal hunting, which are seized by a conservation officer, are upon conviction forfeited under the provisions of *The Game and Fish Act*.

Fail-Safe: Reopening a Conviction

All of us know that on occasion something can go wrong in a system of delivering, filing and processing of documents of any kind, including legal ones. *The Provincial Offences Act* therefore provides a fail-safe mechanism for reopening a proceeding where a defendant did not have an opportunity to dispute the charge because a necessary notice or document did not arrive at his address, or at the office of the court.

The defendant may appear before a justice in the court office and give an explanation of why he did not dispute the charge or appear at a hearing. He must do this within 15 days of learning that he has been convicted. If the justice is satisfied that the explanation establishes it was through no fault of his own that the defendant did not have a trial, he will strike out the conviction. He will also give the defendant a notice of the trial date, or listen to a plea of guilty with an explanation at that time, and consider whether the set fine should be reduced under the circumstances.

The defendant's statement is made under oath in a prescribed form. The Act provides that a fine of up to $1,000 may be imposed for making a false statement in writing.

Part III Proceedings

As stated previously, the Part III procedure in *The Provincial Offences Act* resembles more closely the summary conviction procedure which was previously adopted from the *Criminal Code.* It will therefore be used when the offence is of a more serious nature, and where penalties are correspondingly higher.

Proceedings are commenced when any person, whether a provincial offences officer or a private individual, lays an information before a justice under oath. If the justice considers that the allegations establish that an offence has probably been committed, he will issue a summons to the person charged. Alternatively, he may issue a warrant for the arrest of the defendant if the statute authorizes it, and if he believes that it is necessary in the public interest to do so. There are very few Ontario statutes which authorize the arrest of a person charged, since provincial offences are usually not of a serious nature.

A provincial offences officer may serve a summons before he lays the information, if he believes on reasonable and probable grounds that an offence has been committed by a person whom he finds on the scene. This saves the difficulty and expense of attempting to locate a person at a later date, to serve a summons, when his whereabouts may be difficult to ascertain, especially if he is not a resident of the area where the offence was committed.

The provincial offences officer must serve the summons by delivering it personally, or else by leaving it with someone at the defendant's residence who is apparently 16 years of age or over. A person who is not a resident of Ontario may be served with the summons by registered mail. A corporation may be served in a number of ways.

The law requires that the charge as stated must reasonably inform the defendant of the nature of the offence which he is alleged to have committed, in order that he can have the opportunity of making a complete defence and having a proper trial.

The new Act will not permit charges to be dismissed because of minor technical errors, as sometimes occurred under the previous procedures. Failure to set forth every word in a statutory provision, or minor unimportant details of the offence, will not render a charge invalid, provided that the defendant has been made reasonably aware of the charge which will be presented against him. The object is to proceed with the trial of the case on its merits, and not to permit mere technical objections to frustrate the proceeding.

The Trial

The Provincial Offences Court

At the same time that *The Provincial Offences Act* was enacted, the Legislature of Ontario amended *The Provincial Courts Act* in order to create a new court known as the Provincial Offences Court. This court will hear and determine almost all trials of provincial offences (including pleas of guilty with an explanation under Part I of the Act).

Proceedings in the Provincial Offences Court will be held separately from those of the Provincial Court (Criminal Division), in which trials of provincial offences were frequently mixed together with criminal trials. It is anticipated that this separation will result in an atmosphere which is less legalistic and formal than that of the criminal court. The separation of provincial and criminal trials will generally be brought about by designating certain courtrooms as Provincial Offences Courts, or by convening the Provincial Offences Court at different times or on different days of the week in the same courtroom used at other times for criminal matters.

The term "justice" when used in the Act means either a justice of the peace or a provincial judge. The Provincial Offences Court will ordinarily be presided over by justices of the peace, who will be acting under the general supervision of a judge of the Provincial Court (Criminal Division). In most areas, provincial judges will preside in Provincial Offences Court only when serious cases are being tried. A number of provisions of *The Provincial Offences Act,* most notably the new appeal procedures, are designed to strengthen the supervision of justices of the peace by the provincial judges.

Residual Power

In another move away from the rigidities of criminal procedure, *The Provincial Courts Act* vests in the court the power to take necessary procedural steps where the code contains a gap, or fails to have contemplated a novel fact situation. This is designed to facilitate the effective enforcement of laws and assertion of rights by eliminating needless technicalities.

The power is a narrow one; its intent is to give the court the power to take necessary steps in the absence of express statutory procedural provisions. The power puts elasticity in the procedural amendments. It has also permitted *The Provincial Offences Act* to be drafted without the great amount of detail which has characterized the *Criminal Code*. The intent is to ensure that once a prosecution is properly before a court, the matter will be fairly determined on its merits.

Contempt of Court

The judicial officers who preside in the Provincial Court will have certain powers to deal with contempt committed in the face of the court. In order to control and regulate this power, *The Provincial Courts Act* sets out a detailed structure for its exercise, including a number of safeguards. The contempt power will continue to be used sparingly, and only in the most extreme cases.

The Provincial Offences Court also has power to remove a defendant or any member of the public from the courtroom if it is necessary to do so for the maintenance of order, to protect the reputation of a minor, or to remove an influence which might affect the testimony of a witness.

Amendments

Since the object of *The Provincial Offences Act* is to assist the court to determine the facts of each case, without permitting minor technicalities to bring proceedings to a halt, the Act gives the court a wide power to amend a certificate of offence or an information which is defective. Amendments can be made only in open court, when both the prosecutor and the defendant have been given an opportunity to be present at a trial to express their views. Therefore, an amendment cannot be made when a defendant pleads guilty with an explanation.

In considering whether or not to make the amendment, the court must take into account the evidence given at the trial, the circumstances of the case, whether the defendant has been misled or prejudiced by the defect, and whether the proposed amendment would result in injustice. If the court makes an amendment, it may grant an adjournment if the defendant requires time to prepare. The court can also order the prosecution to furnish the defendant with any necessary particulars, if he is unable to prepare his defence properly because the charge does not contain sufficient information.

Since the power to amend a charge is quite ample under the new Act, the court can quash the certificate or information only where the defect is so fundamental that an amendment or particulars would fail to satisfy the ends of justice.

Lawyers, Agents, and Interpreters

A defendant may appear and act at a trial or in any proceeding in person, or he may be represented by an agent or a lawyer. Nothing compels him to employ a lawyer at any stage of a proceeding in the Provincial Offences Court.

Even though a defendant may be represented by a lawyer or agent, the court has the power to order the defendant to attend personally, and where necessary may issue a summons to compel his attendance. The penalty for failure to obey any order to appear personally without lawful excuse is a fine of not more than $1,000, or imprisonment for a term of not more than 30 days, or both. This provision also applies to witnesses who have been served with a subpoena requiring them to appear in court.

An interpreter can act for the defendant at any stage of the proceedings, provided that he is competent and has been authorized by a judge or justice to do so.

Pleading Guilty to Another Offence

The Provincial Offences Act permits a defendant to plead guilty at a trial to an offence other than the one with which he is charged. For example, the defendant might plead not guilty to a charge of careless driving, but he may admit that in fact he did commit the different offence of following too closely, or making an improper turn. If the prosecutor consents, and the court feels that the plea is a proper one as supported by the facts, the justice may accept the plea of guilty and proceed to determine the case on the facts presented.

Failing to Appear

Where the defendant does not appear at the time and place set for a trial, the court may proceed to hear and determine the matter in the absence of the defendant. If the court does so, the defendant may not be charged with the offence of failing to attend at a hearing, except with the consent of the Attorney General, or his agent. The defendant who is convicted in his absence will be informed of the conviction and the sentence imposed by a notice sent by the clerk of the court.

If the prosecutor fails to appear at that time, the court may dismiss the charge or adjourn the hearing to another time. If the prosecutor does not appear at the time and place appointed for the resumption of the hearing, the court may dismiss the charge. In either of these situations the court may make an order for the payment of reasonable costs to the defendant by the informant.

These are limited to expenses which the defendant has reasonably incurred in having witnesses present and are limited by regulation.

Sentencing and Fine Enforcement

A Flexible Approach

The Provincial Offences Act is intended to keep people from going to jail because of their inability to pay a fine. It alters the previous situation whereby large numbers of people were sent to jail because they failed to pay fines which were imposed for minor offences, while extremely few persons were sentenced to a term of imprisonment for even the more serious provincial offences. The Act recognizes the fine as the principal means of impressing the community's disapproval upon those who commit provincial offences. The Act also establishes effective means for collecting the fines which are imposed.

The new Act recognizes that individuals vary greatly both in their financial circumstances and in the circumstances which led to the breach of the law. Therefore, rather than treating all offenders uniformly, the new procedures will enable the courts to exercise discretion in selecting one or more methods of sentencing and of fine enforcement. The goal of discouraging illegal conduct in the future will be greatly assisted by imposing a penalty which is appropriate for each offender.

Fines

After a defendant has been convicted, the court must allow both the prosecutor and the defendant to make submissions regarding the sentence to be imposed. The court also has the discretion to inquire into the defendant's economic circumstances, but the defendant need not answer if he does not wish to. Any information which the defendant gives will assist the justice in determining the amount of the fine and how much time a defendant should be given to pay it.

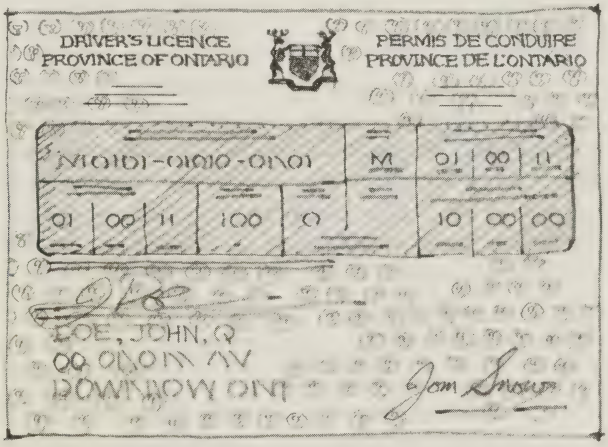
A fine becomes due and payable 15 days after it was imposed. The court is required to ask the defendant if he wishes an extension of time to pay. It may also make inquiries of the defendant, and, unless the request for more time is not made in good faith or would probably be used to evade payment, the court must extend the time for payment, by ordering periodic payments or otherwise. The defendant may at any time request a further extension simply by filling in a prescribed form at the court office.

A fine is in default when any part of it is due and unpaid for 15 days or more. Since a fine is not due until 15 days after it is imposed, the defendant actually has 30 days to pay before collection procedures will be commenced.

Collecting the Fine

A justice will examine all unpaid fines in the court office, and under some circumstances must order that a permit or licence held by the defendant be suspended or not renewed until the fine is paid. The justice must do this if the Act which authorizes the issuing of the permit or licence also authorizes its suspension for non-payment of a fine. For instance, a driver's licence issued under *The Highway Traffic Act* must be suspended if the driver does not pay a fine for the violation of the Highway Traffic Act offence, or obtain an extension of time for payment.

In addition, the justice may direct the clerk of the Provincial Offences Court to proceed with civil enforcement of the fine. A certificate of the amount of fine remaining unpaid will be filed in the appropriate civil court and will have the effect of a judgment for the purposes of enforcement. The civil court could authorize deductions to be made from the defendant's wages, or order some of his property to be seized and sold.



Jail: The Last Resort

In some situations, a justice may issue a warrant for the committal of a defaulting defendant to prison. Before he can do that, he must be satisfied that all other methods of collecting the fine which are reasonable under the circumstances have been tried and have failed, or would not likely result in payment. In addition, the justice must give the defendant 15 days notice of the intent to issue a warrant and an opportunity to be heard. Thus, imprisonment

will be ordered only for the most obstinate and wilful fine defaulter. If medical or financial problems have made it impossible for a convicted person to pay his fine in time, an extension of time will be granted and no warrant of committal will be issued.

Recognizing that exceptional cases will always come before the courts, the Act permits the sentencing justice to order that no time to pay beyond the 15-day automatic period be granted and the offender be jailed if the fine is not paid when due. At the other end of the scale, circumstances may be such that the offender can never reasonably hope to pay the fine, even by instalments. An example might be an elderly person living on a limited income who has been fined for a traffic offence, but who has sold his car and never intends to drive again. In circumstances such as these, the sentencing justice may order that even if the fine is unpaid, jail will not be resorted to, with licence suspension being the only immediate sanction. The availability of civil enforcement protects the community against a change in the offender's financial circumstances, but jail would not be used where there is no reasonable probability of payment, or of a re-commission of the offence.

The Provincial Offences Act provides that, where a defendant is subject to more than one term of imprisonment at the same time, the terms are to be served consecutively unless the court has specifically ordered them to be served concurrently. This reverses the present law, which permits irresponsible offenders to erase hundreds of dollars of traffic fines by staying overnight in a jail cell. The purpose of this change is to encourage payment, instead of allowing these persons to avoid payment while at the same time causing the public to incur the substantial costs of incarceration.

Other Options

In addition to these procedures, the Act gives the court a restricted power, in exceptional circumstances, to impose a fine that is less than the minimum fine stated in the statute which creates the offence. The court may also suspend the sentence without imposing conditions. This may be done only where "exceptional circumstances exist so that to impose the minimum fine would be unduly oppressive or otherwise not in the interests of justice." An example might be the case of a retired person living on a modest pension who is unable to pay a large fine and has lost his driver's licence and had his car destroyed in an accident. In addition, the justice who imposes the sentence may direct that no warrant of committal ever be issued in respect of the fine that is imposed.

The sentencing provisions of the Act also provide for the creation of programs by which defendants could pay their fines by means of credits for work performed. In areas where the administrative structure is available, this option will permit an impecunious defendant to work off his fine in services of some value to the community, rather than going to jail for non-payment.

Appeals

Introduction

"Justice is sweetest when it is freshest." These words written by Francis Bacon, an Attorney General of England in the seventeenth century, are just as true now as they were when he wrote them over three centuries ago. Few experiences are more frustrating than knowing that one is innocent when an error or misunderstanding on the part of the judicial officer has resulted in an adverse decision. For this reason it is essential to a fair and convenient system of justice that a fast and inexpensive process of appeal be available.

Appeals under Part I

Where an offence has been dealt with under the procedures of Part I, the defendant or the prosecutor is entitled to appeal against acquittal, conviction, or sentence, including costs. To launch the appeal, it is only necessary to pay the fine and complete and file a prescribed form. The notice of appeal will be filed with the clerk of the Provincial Court (Criminal Division) of the county or district in which the original decision was made.

An appeal from a proceeding under Part I will be heard and determined by a judge of the Provincial Court (Criminal Division). The appeal will be conducted by means of a review. This procedure is designed to permit the parties to appear without legal representation. The hearing will be informal and is directed at resolving the dissatisfactions felt by either party. The judge must first make inquiries to clarify the issues in dispute, in order that misunderstandings can be removed and frivolous arguments disposed of. Having determined the real issues, he may then listen to all or part of the tape-recorded proceedings in the Provincial Offences Court. In addition, he can hear witnesses, receive reports from the justice who presided at trial, and act

upon statements of fact to which the parties have agreed. The judge has power to affirm, reverse, or modify the decision appealed from. In addition, if he feels it is necessary in order to satisfy the ends of justice, he may direct that a new trial be held.

It is intended that the appeal will be heard reasonably soon after the decision is made by the trial court. It is expected that the flexibility and convenience of this new form of appeal will guarantee fairness to defendants by permitting them to obtain a review of decisions in the Provincial Offences Court in a simple and inexpensive manner.

Appeals under Part III

Where a proceeding has been commenced by an information under Part III, a party may appeal from a finding as to ability to conduct a defence because of mental disorder, as well as from conviction, dismissal, or sentence. If the trial was presided over by a justice of the peace, the appeal will be to a judge of the Provincial Court (Criminal Division). If the trial was presided over by a provincial judge, the appeal will be to a judge of the County Court. This form of appeal will be conducted in the traditional formal manner, rather than by way of an informal review procedure as with Part I proceedings, because Part III is designed for more serious offences. In Provincial Court a party may be represented by legal counsel or an agent, although in County Court agents cannot appear.

Appeals to the Court of Appeal

A further appeal is provided to the Court of Appeal, the highest court in Ontario, upon any questions of law alone, as opposed to factual matters. In addition, an appeal may be made to the Court of Appeal concerning the sentence imposed in a proceeding brought in respect of more serious offences. In all cases, leave to appeal must first be obtained from a Justice of Appeal. The appellant must satisfy the Justice that, in the particular circumstances of the case, it is essential in the public interest or for the due administration of justice that leave be granted.

An Act to establish a Code of Procedure for Provincial Offences

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

INTERPRETATION

1.—(1) In this Act, Interpretation

(*a*) "certificate" means a certificate of offence issued under Part I or a certificate of parking infraction issued under Part II;

(*b*) "court" means a provincial offences court or, where jurisdiction in respect of the offence is conferred upon a provincial court (family division) by any other Act, the provincial court (family division);

(*c*) "judge" means a provincial judge;

(*d*) "justice" means a provincial judge or a justice of the peace;

(*e*) "offence" means an offence under an Act of the Legislature or under a regulation or by-law made under the authority of an Act of the Legislature;

(*f*) "police officer" means a chief of police or other police officer or constable but does not include a special constable or by-law enforcement officer;

(*g*) "prescribed" means prescribed by the rules of the provincial offences courts;

(*h*) "prosecutor" means the Attorney General or, where the Attorney General does not intervene, means the person who issues a certificate or lays an information and includes counsel or agent acting on behalf of either of them;

(*i*) "provincial offences officer" means a police officer or a person designated under subsection 2;

(*j*) "set fine" means the amount of fine set by the court for an offence for the purpose of proceedings commenced under Part I or II.

Designation of provincial offences officers

(2) A minister of the Crown may designate in writing any person or class of persons as a provincial offences officer for the purposes of all or any class of offences.

Purpose of Act

2.—(1) The purpose of this Act is to replace the summary conviction procedure for the prosecution of provincial offences, including the provisions adopted by reference to the *Criminal Code* (Canada), with a new procedure that reflects the distinction between provincial offences and criminal offences.

R.S.C. 1970, c. C-34

Interpretation

(2) Where, as an aid to the interpretation of provisions of this Act, recourse is had to the judicial interpretation of and practices under corresponding provisions of the *Criminal Code* (Canada), any variation in wording without change in substance shall not, in itself, be construed to intend a change of meaning.

PART I

COMMENCEMENT OF PROCEEDINGS BY CERTIFICATE OF OFFENCE

Certificate of offence

3.—(1) In addition to the procedure set out in Part III for commencing a proceeding by laying an information, a proceeding in respect of an offence may be commenced by filing a certificate of offence alleging the offence in the office of the court named therein.

Issuance and service

(2) A provincial offences officer who believes that one or more persons have committed an offence may issue, by completing and signing, a certificate of offence certifying that an offence has been committed and,

(*a*) an offence notice indicating the set fine for the offence; or

(*b*) a summons,

in the form prescribed under section 13.

Service

(3) The offence notice or summons shall be served personally upon the person charged within thirty days after the alleged offence occurred.

Signature

(4) Upon the service of an offence notice or summons, the person charged shall be requested to sign the certificate of offence, but the failure or refusal to sign as requested does not invalidate the certificate of offence or the service of the offence notice or summons.

(5) Where service is made by the provincial offences officer who issued the certificate of offence, he shall certify on the certificate of offence that he personally served the offence notice or summons on the person charged and the date of service. Certificate of service

(6) Where service is made by a person other than the provincial offences officer who issued the certificate of offence, he shall complete an affidavit of service in the prescribed form. Affidavit of service

(7) A certificate of service of an offence notice or summons purporting to be signed by the provincial offences officer issuing it or an affidavit of service under subsection 6 shall be received in evidence and is proof of personal service in the absence of evidence to the contrary. Certificate as evidence

(8) The provincial offences officer who serves an offence notice or summons under this section shall not receive payment of any money in respect of a fine, or receive the offence notice for delivery to the court. Officer not to act as agent

4. A certificate of offence shall be filed in the office of the court named therein as soon as is practicable after service of the offence notice or summons. Filing of certificate of offence

5.—(1) Where an offence notice is served on a defendant, he may plead not guilty by signing the not guilty plea on the offence notice and indicate his desire in the form prescribed on the notice to appear or be represented at a trial and deliver the offence notice to the office of the court specified in the notice. Dispute with trial

(2) Where an offence notice is received under subsection 1, the clerk of the court shall, as soon as is practicable, give notice to the defendant and prosecutor of the time and place of the trial. Notice of trial

6.—(1) Where an offence notice is served on a defendant whose address as shown on the certificate of offence is outside the territorial jurisdiction of the court specified in the notice, and he wishes to dispute the charge but does not wish to attend or be represented at a trial, he may do so by signifying his intention on the offence notice and delivering the offence notice to the office of the court specified in the notice together with a written dispute setting out with reasonable particularity his dispute and any facts upon which he relies. Dispute without appearance

(2) Where an offence notice is delivered under subsection 1, a justice shall, in the absence of the defendant, consider the dispute and, Disposition

(*a*) where the dispute raises an issue that may constitute a defence, direct a hearing; or

(*b*) where the dispute does not raise an issue that may constitute a defence, convict the defendant and impose the set fine.

Hearing

(3) Where the justice directs a hearing under subsection 2, the court shall hold the hearing and shall, in the absence of the defendant, consider the evidence in the light of the issues raised in the dispute, and acquit the defendant or convict the defendant and impose the set fine or such lesser fine as is permitted by law.

Application of section

(4) This section applies in such part or parts of Ontario as are prescribed by the regulations.

Plea of guilty with representations

7.—(1) Where an offence notice is served on a defendant and he does not wish to dispute the charge but wishes to make submissions as to penalty, including the extension of time for payment, he may attend at the time and place specified in the notice and may appear before a justice sitting in court for the purpose of pleading guilty to the offence and making submissions as to penalty, and the justice may enter a conviction and impose the set fine or such lesser fine as is permitted by law.

Submissions under oath

(2) The justice may require submissions under subsection 1 to be made under oath, orally or by affidavit.

Payment out of court

8.—(1) Where an offence notice is served on a defendant and he does not wish to dispute the charge, he may sign the plea of guilty on the offence notice and deliver the offence notice and amount of the set fine to the office of the court specified in the notice.

Conviction

(2) Acceptance by the court office of payment under subsection 1 constitutes a plea of guilty whether or not the plea is signed and endorsement of payment on the certificate of offence constitutes the conviction and imposition of a fine in the amount of the set fine for the offence.

Failure to respond to offence notice

9. Where at least fifteen days have elapsed after the defendant was served with the offence notice and the offence notice has not been delivered in accordance with section 6 or 8 and a plea of guilty has not been accepted under section 7, the defendant shall be deemed to not wish to dispute the charge and a justice shall examine the certificate of offence and,

(*a*) where the certificate of offence is complete and regular on its face, he shall enter a conviction in the defendant's absence and without a hearing and impose the set fine for the offence; or

(*b*) where the certificate of offence is not complete and regular on its face, he shall quash the proceeding.

Signature on plea

10. A signature affixed to the form of plea of guilty or not guilty on an offence notice, purporting to be that of the defendant, is *prima facie* proof that it is the signature of that person.

Reopening on failure of notice

11.—(1) Where the defendant has not had an opportunity to dispute the charge or to appear or be represented at a hearing for the reason that through no fault of his own the delivery of a necessary notice or document failed to occur in fact, and where not more than fifteen days have elapsed since the conviction first came to the attention of the defendant, the defendant may attend at the court office during regular office hours and may appear before a justice and the justice, upon being satisfied by affidavit in the prescribed form of such facts, shall strike out the conviction, if any, and give the person appearing a notice of trial under section 5 or proceed under section 7.

Certificate of striking out conviction

(2) Where a conviction is struck out under subsection 1, the justice shall give the defendant a certificate of the fact in the prescribed form.

Penalty

12.—(1) Where the penalty prescribed for an offence includes a fine of more than $300 or imprisonment and proceedings are taken under this Part, the provision for fine or imprisonment does not apply and in lieu thereof the offence is punishable by a fine of not more than the maximum fine prescribed for the offence or $300, whichever is the lesser.

Other consequences of conviction

(2) Where a person is convicted of an offence in a proceeding initiated by an offence notice,

(*a*) a provision in or under any other Act that provides for an action or result following upon a conviction of an offence does not apply to the conviction, except,

(i) for the purpose of carrying out the sentence imposed,

(ii) for the purpose of recording and proving the conviction,

(iii) for the purposes of the demerit point system under *The Highway Traffic Act*, and

R.S.O. 1970, c. 202

(iv) for the purposes of section 27 of *The Highway Traffic Act*; and

(*b*) any thing seized in connection with the offence after the service of the offence notice is not liable to forfeiture.

Regulations

13.—(1) The Lieutenant Governor in Council may make regulations,

(*a*) prescribing the form of certificates of offence, offence notices and summonses and such other forms as are considered necessary under this Part;

(*b*) authorizing the use in a form prescribed under clause *a* of any word or expression to designate an offence;

(*c*) respecting any matter that is considered necessary to provide for the use of the forms under this Part.

Sufficiency of abbreviated wording

(2) The use on a form prescribed under clause *a* of subsection 1 of any word or expression authorized by the regulations to designate an offence is sufficient for all purposes to describe the offence designated by such word or expression.

Idem

(3) Where the regulations do not authorize the use of a word or expression to describe an offence in a form prescribed under clause *a* of subsection 1, the offence may be described in accordance with section 26.

PART II

COMMENCEMENT OF PROCEEDINGS FOR PARKING INFRACTIONS

Interpretation

14. In this Part, "parking infraction" means any unlawful parking, standing or stopping of a vehicle that constitutes an offence.

Date applicable to infractions under municipal by-laws

15.—(1) Subject to subsection 2, this Part does not apply in respect of parking infractions under by-laws of municipalities until a date two years after this Part comes into force.

Idem

(2) Subject to the approval of the Lieutenant Governor in Council, the council of a municipality, including a regional, district or metropolitan municipality, may by by-law declare that this Part applies in respect of parking infractions under by-laws in the municipality on a date earlier than the date determined under subsection 1.

Certificate of parking infraction and notice

16.—(1) In addition to the procedure set out in Part III for commencing a proceeding by laying an information, a proceeding in respect of a parking infraction may be commenced by filing a certificate of the parking infraction in the office of the court named therein, within thirty days after the alleged offence occurred.

Issuance and notice

(2) A provincial offences officer who believes from his personal knowledge that one or more persons have committed a parking infraction may issue, by completing and signing,

(*a*) a certificate of parking infraction certifying that a parking infraction has been committed; and

(*b*) a parking infraction notice indicating the set fine for the infraction,

in the form prescribed under section 21.

Service of notice on owner

(3) The issuing provincial offences officer may serve the parking infraction notice on the owner of the vehicle identified therein by affixing it to the vehicle in a conspicuous place at the time of the alleged infraction, or delivering it personally to the person having care and control of the vehicle at the time of the alleged infraction.

Dispute with trial

17.—(1) Where a parking infraction notice is served, the defendant may plead not guilty by signing the not guilty plea on the notice and indicate his desire in the form prescribed on the notice to appear or be represented at a trial and deliver it to the place specified in the notice.

Notice of trial

(2) Where a parking infraction notice is received under subsection 1, the clerk of the court shall, as soon as is practicable, give notice to the defendant and prosecutor of the time and place of the trial.

Payment out of court

18. Where the defendant does not wish to dispute the charge, he may deliver the notice and amount of the set fine to the place shown on the notice.

Failure to respond to parking infraction notice

19.—(1) Where at least fifteen days have elapsed after the defendant was served with the parking infraction notice and the parking infraction notice has not been delivered in

accordance with subsection 1 of section 17, the defendant shall be deemed to not wish to dispute the charge and a justice shall examine the certificate of parking infraction and where the justice is satisfied,

(*a*) that the certificate of parking infraction is complete and regular on its face;

(*b*) where the defendant is liable as owner, that he is the owner; and

(*c*) that payment has not been made under section 18,

the justice shall enter a conviction in the defendant's absence and without a hearing and impose the set fine for the offence.

Quashing proceeding

(2) Where the justice is not able to enter a conviction under subsection 1, he shall quash the proceeding.

Notice of fine

(3) The clerk of the court shall give notice to the person against whom a conviction is entered under subsection 1 of the date and place of the infraction, the date of the conviction and the amount of the fine, and the fine or any part of the fine not paid within fifteen days after the giving of the notice shall be deemed to be in default.

Reopening on failure of notice

20. Where the defendant has not had an opportunity to dispute the charge or appear or be represented at a hearing for the reason that, through no fault of his own, the delivery of a necessary notice or document failed to occur in fact, and where not more than fifteen days have elapsed since the conviction first came to the attention of the defendant, the defendant may attend at the court office during regular office hours and may appear before a justice and the justice, upon being satisfied by affidavit in the prescribed form of such facts, shall strike out the conviction, if any, and give the person appearing a notice of trial under subsection 2 of section 17 or accept a plea of guilty under section 18.

Regulations

21.—(1) The Lieutenant Governor in Council may make regulations,

(*a*) prescribing the form of certificates of parking infractions and parking infraction notices and such other forms as are considered necessary under this Part;

(*b*) authorizing the use in a form prescribed under clause *a* of any word or expression to designate a parking infraction;

(*c*) respecting any matter that is considered necessary to provide for the use of the forms under this Part.

Sufficiency of abbreviations

(2) The use on a form prescribed under clause *a* of subsection 1 of any word or expression authorized by the regulations to designate a parking infraction is sufficient for all purposes to describe the infraction designated by such word or expression.

Idem

(3) Where the regulations do not authorize the use of a word or expression to describe a parking infraction in a form prescribed under clause *a* of subsection 1, the offence may be described in accordance with section 26.

PART III

COMMENCEMENT OF PROCEEDING BY INFORMATION

Commencement of proceeding by information

22.—(1) In addition to the procedure set out in Parts I and II for commencing a proceeding by the filing of a certificate, a proceeding in respect of an offence may be commenced by laying an information.

Exception

(2) Where a summons or offence notice has been served under Part I, no proceeding shall be commenced under subsection 1 in respect of the same offence except with the consent of the Attorney General or his agent.

Summons before information laid

23. Where a provincial offences officer believes, on reasonable and probable grounds, that an offence has been committed by a person whom he finds at or near the place where the offence was committed, he may, before laying an information, serve the person with a summons in the prescribed form.

Information

24.—(1) Any person who, on reasonable and probable grounds, believes that one or more persons have committed an offence, may lay an information in the prescribed form and under oath before a justice alleging the offence and the justice shall receive the information.

Idem

(2) An information may be laid anywhere in Ontario.

Procedure on laying of information

25.—(1) A justice who receives an information laid under section 24 shall consider the information and, where he considers it desirable to do so, hear and consider *ex parte* the allegations of the informant and the evidence of witnesses and,

(*a*) where he considers that a case for so doing is made out,

(i) confirm the summons served under section 23, if any,

(ii) issue a summons in the prescribed form, or

(iii) where the arrest is authorized by statute and where the allegations of the informant or the evidence satisfy the justice on reasonable and probable grounds that it is necessary in the public interest to do so, issue a warrant for the arrest of the defendant; or

(*b*) where he considers that a case for issuing process is not made out,

(i) so endorse the information, and

(ii) where a summons was served under section 23, cancel it and cause the defendant to be so notified.

Summons or warrants in blank

(2) A justice shall not sign a summons or warrant in blank.

Counts

26.—(1) Each offence charged in an information shall be set out in a separate count.

Allegation of offence

(2) Each count in an information shall in general apply to a single transaction and shall contain and is sufficient if it contains in substance a statement that the defendant committed an offence therein specified.

Reference to statutory provision

(3) Where in a count an offence is identified but the count fails to set out one or more of the essential elements of the offence, a reference to the provision creating or defining the offence shall be deemed to incorporate all the essential elements of the offence.

Idem

(4) The statement referred to in subsection 2 may be,

(*a*) in popular language without technical averments or allegations of matters that are not essential to be proved;

(*b*) in the words of the enactment that describes the offence; or

(*c*) in words that are sufficient to give to the defendant notice of the offence with which he is charged.

(5) Any number of counts for any number of offences may be joined in the same information. More than one count

(6) A count shall contain sufficient detail of the circumstances of the alleged offence to give to the defendant reasonable information with respect to the act or omission to be proved against him and to identify the transaction referred to. Particulars of count

(7) No count in an information is insufficient by reason of the absence of details where, in the opinion of the court, the count otherwise fulfils the requirements of this section and, without restricting the generality of the foregoing, no count in an information is insufficient by reason only that, Sufficiency

(*a*) it does not name the person affected by the offence or intended or attempted to be affected;

(*b*) it does not name the person who owns or has a special property or interest in property mentioned in the count;

(*c*) it charges an intent in relation to another person without naming or describing the other person;

(*d*) it does not set out any writing that is the subject of the charge;

(*e*) it does not set out the words used where words that are alleged to have been used are the subject of the charge;

(*f*) it does not specify the means by which the alleged offence was committed;

(*g*) it does not name or describe with precision any person, place or thing; or

(*h*) it does not, where the consent of a person, official or authority is required before proceedings may be instituted for an offence, state that the consent has been obtained.

(8) A count is not objectionable for the reason only that, Idem

(*a*) it charges in the alternative several different matters, acts or omissions that are stated in the alternative in an enactment that describes as an offence the matters, acts or omissions charged in the count; or

(*b*) it is double or multifarious.

Need to negative exception, etc.

(9) No exception, exemption, proviso, excuse or qualification prescribed by law is required to be set out or negatived, as the case may be, in an information.

Summons

27.—(1) A summons issued under section 23 or 25 shall,

(*a*) be directed to the defendant;

(*b*) set out briefly the offence in respect of which the defendant is charged; and

(*c*) require the defendant to attend court at a time and place stated therein and to attend thereafter as required by the court in order to be dealt with according to law.

Service

(2) A summons shall be served by a provincial offences officer by delivering it personally to the person to whom it is directed or if that person cannot conveniently be found, by leaving it for him at his last known or usual place of abode with an inmate thereof who appears to be at least sixteen years of age.

Service outside Ontario

(3) Notwithstanding subsection 2, where the person to whom a summons is directed does not reside in Ontario, the summons shall be deemed to have been duly served seven days after it has been sent by registered mail to his last-known or usual place of abode.

Service on corporation

(4) Service of a summons on a corporation may be effected by delivering the summons personally,

(*a*) in the case of a municipal corporation, to the mayor, warden, reeve or other chief officer of the corporation or to the clerk of the corporation; or

(*b*) in the case of any other corporation, to the manager, secretary or other executive officer of the corporation or person apparently in charge of a branch office thereof,

or by mailing the summons by registered mail to the corporation at an address held out by the corporation to be its address, in which case the summons shall be deemed to have been duly served seven days after the day of mailing.

Substitutional service

(5) A justice, upon application and upon being satisfied that service can not be made effectively on a corporation

in accordance with subsection 4, may by order authorize another method of service that has a reasonable likelihood of coming to the attention of the corporation.

Proof of service

(6) Service of a summons may be proved by statement under oath, written or oral, of the person who made the service.

Contents of warrant

28.—(1) A warrant issued under section 25 shall,

(*a*) name or describe the defendant;

(*b*) set out briefly the offence in respect of which the defendant is charged; and

(*c*) order that the defendant be forthwith arrested and brought before a justice to be dealt with according to law.

Idem

(2) A warrant issued under section 25 remains in force until it is executed and need not be made returnable at any particular time.

PART IV

TRIAL AND SENTENCING

Trial

Application of Part

29. This Part applies to proceedings commenced under this Act.

Proper court

30.—(1) Subject to subsection 2, a proceeding in respect of an offence shall be heard and determined in the provincial offences court in whose territorial jurisdiction the offence occurred.

Idem

(2) A proceeding in respect of an offence may be heard and determined in the provincial offences court having territorial jurisdiction that adjoins that in which the offence occurred if,

(*a*) the court holds sittings in a place reasonably proximate to the place where the offence occurred; and

(*b*) the court and place of sitting referred to in clause *a* are named in the summons or offence notice.

Transfer to proper court

(3) Where a proceeding is taken in a court other than one referred to in subsection 1 or 2, the court shall order that the proceeding be transferred to the proper court and may where the defendant appears award costs under section 61.

Change of venue

(4) Where, upon the application of a defendant or prosecutor made to the court named in the information or certificate, it appears to the court that,

(*a*) it would be appropriate in the interests of justice to do so; or

(*b*) both the defendant and prosecutor consent thereto,

the court may order that the proceeding be transferred to another court in Ontario.

Conditions

(5) The court may, in an order made upon an application by the prosecutor under subsection 3 or 4, prescribe conditions that it thinks proper with respect to the payment of additional expenses caused to the defendant as a result of the change of venue.

Time of order for change of venue

(6) An order under subsection 3 or 4 may be made notwithstanding that any motion preliminary to trial has been disposed of or that the plea has been taken and it may be made at any time before evidence has been heard.

Preliminary motions

(7) The court to which proceedings are transferred under this section may receive and determine any motion preliminary to trial notwithstanding that the same matter was determined by the court from which the proceeding was transferred.

Delivery of papers

(8) Where an order is made under subsection 3 or 4, the clerk of the court in which the trial was to be held before the order was made shall deliver any material in his possession in connection with the proceedings forthwith to the clerk of the court before which the trial is ordered to be held, and all proceedings in the case shall be held or, if previously commenced, shall be continued in that court.

Justice presiding at trial

31.—(1) The justice presiding when evidence is first taken at the trial shall preside over the whole of the trial.

When presiding justice unable to act before adjudication

(2) Where evidence has been taken at a trial and, before making his adjudication, the presiding justice dies or in his opinion or the opinion of the chief judge of the provincial offences courts is for any reason unable to continue, another justice shall conduct the hearing again as a new trial.

When presiding justice unable to act after adjudication

(3) Where evidence has been taken at a trial and, after making his adjudication but before making his order or imposing sentence, the presiding justice dies or in his opinion or the opinion of the chief judge of the provincial offences

courts is for any reason unable to continue, another justice may make the order or impose the sentence that is authorized by law.

Consent to change presiding justice

(4) A justice presiding at a trial may, at any stage of the trial and upon the consent of the prosecutor and defendant, order that the trial be conducted by another justice and, upon the order being given, subsection 2 applies as if the justice were unable to act.

Retention of jurisdiction

32. The court retains jurisdiction over the information or certificate notwithstanding the failure of the court to exercise its jurisdiction at any particular time or that the provisions of this Act respecting adjournments are not complied with.

Stay of proceeding

33.—(1) In addition to his right to withdraw a charge, the Attorney General or his agent may stay any proceeding at any time before judgment by direction in court to the clerk of the court in which the proceedings are conducted and thereupon any recognizance relating to the proceeding is vacated.

Recommencement

(2) A proceeding stayed under subsection 1 may be recommenced by direction of the Attorney General, the Deputy Attorney General or a Crown attorney to the clerk of the court in which the proceeding was stayed but a proceeding that is stayed shall not be recommenced,

(*a*) later than one year after the stay; or

(*b*) after the expiration of any limitation period applicable, which shall run as if the proceeding had not been commenced until the recommencement,

whichever is the earlier.

Dividing counts

34.—(1) A defendant may at any stage of the proceeding apply to the court to amend or to divide a count that,

(*a*) charges in the alternative different matters, acts or omissions that are stated in the alternative in the enactment that creates or describes the offence; or

(*b*) is double or multifarious,

on the ground that, as framed, it prejudices him in his defence.

Idem

(2) Upon an application under subsection 2, where the court is satisfied that the ends of justice so require, it may order that a count be amended or divided into two or more counts, and thereupon a formal commencement may be inserted before each of the counts into which it is divided.

Amendment of information or certificate

35.—(1) The court may, at any stage of the proceeding, amend the information or certificate as may be necessary if it appears that the information or certificate,

(*a*) fails to state or states defectively anything that is requisite to charge the offence;

(*b*) does not negative an exception that should be negatived; or

(*c*) is in any way defective in substance or in form.

Idem

(2) The court may, during the trial, amend the information or certificate as may be necessary if the matters to be alleged in the proposed amendment are disclosed by the evidence taken at the trial.

Variances between charge and evidence

(3) A variance between the information or certificate and the evidence taken on the trial is not material with respect to,

(*a*) the time when the offence is alleged to have been committed, if it is proved that the information was laid or certificate issued within the prescribed period of limitation; or

(*b*) the place where the subject-matter of the proceedings is alleged to have arisen, except in an issue as to the jurisdiction of the court.

Considerations on amendment

(4) The court shall, in considering whether or not an amendment should be made, consider,

(*a*) the evidence taken on the trial, if any;

(*b*) the circumstances of the case;

(*c*) whether the defendant has been misled or prejudiced in his defence by a variance, error or omission; and

(*d*) whether, having regard to the merits of the case, the proposed amendment can be made without injustice being done.

(5) The question whether an order to amend an information or certificate should be granted or refused is a question of law. Amendment, question of law

(6) An order to amend an information or certificate shall be endorsed on the information or certificate as part of the record and the trial shall proceed as if the information or certificate had been originally laid as amended. Endorsement of order to amend

36. The court may, before or during trial, if it is satisfied that it is necessary for a fair trial, order that a particular, further describing any matter relevant to the proceedings, be furnished to the defendant. Particulars

37.—(1) An objection to an information or certificate for a defect apparent on its face shall be taken by motion to quash the information or certificate before the defendant has pleaded, and thereafter only by leave of the court. Motion to quash information or certificate

(2) The court shall not quash an information or certificate unless an amendment or particulars under section 34, 35 or 36 would fail to satisfy the ends of justice. Grounds for quashing

38. Where the information or certificate is amended or particulars are ordered and an adjournment is necessary as a result thereof, the court may make an order under section 61 for costs resulting from the adjournment. Costs on amendment or particulars

39.—(1) The court may, before trial, where it is satisfied that the ends of justice so require, direct that separate counts, informations or certificates be tried together or that persons who are charged separately be tried together. Joinder of counts or defendants

(2) The court may, before or during the trial, where it is satisfied that the ends of justice so require, direct that separate counts, informations or certificates be tried separately or that persons who are charged jointly or being tried together be tried separately. Separate trials

40.—(1) Where a justice is satisfied that a person is able to give material evidence in a proceeding under this Act, the justice may issue a subpoena requiring the person to attend to give evidence and bring with him any writings or things referred to in the subpoena. Issuance of subpoena

(2) A subpoena shall be served and the service shall be proved in the same manner as a summons under section 27. Service

Attendance

(3) A person who is served with a subpoena shall attend at the time and place stated in the subpoena to give evidence and, if required by the subpoena, shall bring with him any writing or other thing that he has in his possession or under his control relating to the subject-matter of the proceedings.

Remaining in attendance

(4) A person who is served with a subpoena shall remain in attendance during the hearing and the hearing as resumed after adjournment from time to time unless he is excused from attendance by the presiding justice.

Arrest of witness

41.—(1) Where a judge is satisfied upon evidence under oath, that a person is able to give material evidence that is necessary in a proceeding under this Act and,

(*a*) will not attend if a subpoena is served; or

(*b*) attempts to serve a subpoena have been made and have failed because he is evading service,

the judge may issue a warrant in the prescribed form for the arrest of the person.

Idem

(2) Where a person who has been served with a subpoena to attend to give evidence in a proceeding does not attend or remain in attendance, the court may, if it is established,

(*a*) that the subpoena has been served; and

(*b*) that the person is able to give material evidence that is necessary,

issue or cause to be issued a warrant in the prescribed form for the arrest of the person.

Bringing before justice

(3) The police officer who arrests a person under a warrant issued under subsection 1 or 2 shall immediately take the person before a justice.

Release on recognizance

(4) Unless the justice is satisfied that it is necessary to detain a person in custody to ensure his attendance to give evidence, the justice shall order the person released upon condition that he enter into a recognizance in such amount and with such sureties, if any, as are reasonably necessary to ensure his attendance.

Bringing before judge

(5) Where a proceeding under subsection 4 is before a justice of the peace and the person is not released, the justice of the peace shall cause the person to be brought before a judge within two days of his decision.

Detention

(6) Where the judge is satisfied that it is necessary to detain the person in custody to ensure his attendance to give evidence, the judge may order that the person be detained in custody to testify at the trial or to have his evidence taken by a commissioner under an order made under subsection 11.

Release on recognizance

(7) Where the judge does not make an order under subsection 6, he shall order that the person be released upon condition that he enter into a recognizance in such amount and with such sureties, if any, as are reasonably necessary to ensure his attendance.

Maximum imprisonment

(8) A person who is ordered to be detained in custody under subsection 6 or is not released in fact under subsection 7 shall not be detained in custody for a period longer than ten days.

Release when no longer required

(9) A judge, or the justice presiding at a trial, may at any time order the release of a person in custody under this section where he is satisfied that the detention is no longer justified.

Arrest on breach of recognizance

(10) Where a person who is bound by a recognizance to attend to give evidence in any proceeding does not attend or remain in attendance, the court before which the person is bound to attend may issue a warrant in the prescribed form for the arrest of that person and,

(*a*) where he is brought directly before the court, subsections 6 and 7 apply; and

(*b*) where he is not brought directly before the court, subsections 3 to 7 apply.

Commission evidence of witness in custody

(11) A judge or the justice presiding at the trial may order that the evidence of a person held in custody under this section be taken by a commissioner under section 44, which applies thereto in the same manner as to a witness who is unable to attend by reason of illness.

Order for person in a prison to attend

42.—(1) Where a person whose attendance is required in a court to stand trial or to give evidence is confined in a prison, and a judge is satisfied, upon evidence under oath orally or by affidavit, that his attendance is necessary to satisfy the ends of justice, the judge may issue an order in the prescribed form that the person be brought before the court before which his attendance is required, from day to day, as may be necessary.

Idem

(2) An order under subsection 1 shall be addressed to the person who has custody of the prisoner and on receipt thereof that person shall,

(*a*) deliver the prisoner to the police officer or other person who is named in the order to receive him; or

(*b*) bring the prisoner before the court upon payment of his reasonable charges in respect thereof.

Idem

(3) An order made under subsection 1 shall direct the manner in which the person shall be kept in custody and returned to the prison from which he is brought.

Penalty for failure to attend

43.—(1) Every person who, being required by law to attend or remain in attendance at a hearing, fails without lawful excuse to attend or remain in attendance accordingly is guilty of an offence and on conviction is liable to a fine of not more than $1,000, or to imprisonment for a term of not more than thirty days, or to both.

Proof of failure to attend

(2) In a proceeding under subsection 1, a certificate of the clerk or a justice of the court before which the defendant is alleged to have failed to attend stating that the defendant failed to attend is admissible in evidence as *prima facie* proof of the fact without proof of the signature or office of the person appearing to have signed the certificate.

Order for evidence by commission

44.—(1) Upon the application of the defendant or prosecutor, a judge or, during trial, the court may by order appoint a commissioner to take the evidence of a witness who is out of Ontario or is not likely to be able to attend the trial by reason of illness or physical disability or for some other good and sufficient cause.

Admission of commission evidence

(2) Evidence taken by a commissioner appointed under subsection 1 may be read in evidence in the proceeding if,

(*a*) it is proved by oral evidence or by affidavit that the witness is unable to attend for a reason set out in subsection 1;

(*b*) the transcript of the evidence is signed by the commissioner by or before whom it purports to have been taken; and

(*c*) it is proved to the satisfaction of the court that reasonable notice of the time and place for taking the evidence was given to the other party, and the party had full opportunity to cross-examine the witness.

(3) An order under subsection 1 may make provision to enable the defendant to be present or represented by counsel or agent when the evidence is taken, but failure of the defendant to be present or to be represented by counsel or agent in accordance with the order does not prevent the reading of the evidence in the proceedings if the evidence has otherwise been taken in accordance with the order and with this section. Attendance of accused

(4) Except as otherwise provided by this section or by the rules, the practice and procedure in connection with the appointment of commissioners under this section, the taking of evidence by commissioners, the certifying and return thereof, and the use of the evidence in the proceedings shall, as far as possible, be the same as those that govern like matters in civil proceedings in the Supreme Court. Application of rules in civil cases

45.—(1) Where at any time before a defendant is sentenced a court has reason to believe, based on, Trial of issue as to capacity to conduct defence

(*a*) the evidence of a legally qualified medical practitioner or, with the consent of the parties, a written report of a legally qualified medical practitioner; or

(*b*) the conduct of the defendant in the courtroom,

that the defendant suffers from mental disorder, the court may,

(*c*) where the justice presiding is a judge, by order suspend the proceedings and direct the trial of the issue as to whether the defendant is, because of mental disorder, unable to conduct his defence; or

(*d*) where the justice presiding is a justice of the peace, refer the matter to a judge who may make an order referred to in clause *c*.

(2) For the purposes of subsection 1, the court may order the defendant to attend to be examined under subsection 5. Examination

(3) The trial of the issue shall be presided over by a judge and, Finding

(*a*) where he finds that the defendant is, because of mental disorder, unable to conduct his defence, he shall order that further proceeding on the charge be suspended;

(*b*) where he finds that the defendant is able to conduct his defence, he shall order that the suspended proceeding be continued.

Application for rehearing as to capacity

(4) At any time within one year after an order is made under subsection 3, either party may, upon seven days notice to the other, apply to a judge to rehear the trial of the issue and where upon the rehearing the judge finds that the defendant is able to conduct his defence, he may order that the suspended proceeding be continued.

Order for examination

(5) For the purposes of subsection 1 or a hearing or rehearing under subsection 3 or 4, the court or judge may order the defendant to attend at such place or before such person and at or within such time as are specified in the order and submit to an examination for the purpose of determining whether the defendant is, because of mental disorder, unable to conduct his defence.

Idem

(6) Where the defendant fails or refuses to comply with an order under subsection 5 without reasonable excuse or where the person conducting the examination satisfies a judge that it is necessary to do so, the judge may by warrant direct that the defendant be taken into such custody as is necessary for the purpose of the examination and in any event for not longer than seven days and, where it is necessary to detain the defendant in a place, the place shall be, where practicable, a psychiatric facility.

Limitation on suspension of proceeding

(7) Where an order is made under subsection 3 and one year has elapsed and no further order is made under subsection 4, no further proceeding shall be taken in respect of the charge or any other charge arising out of the same circumstance.

Taking of plea

46.—(1) After being informed of the substance of the information or certificate, the defendant shall be asked whether he pleads guilty or not guilty of the offence charged therein.

Conviction on plea of guilty

(2) Where the defendant pleads guilty, the court may accept the plea and convict him.

Refusal to plead

(3) Where the defendant refuses to plead or does not answer directly, the court shall enter a plea of not guilty.

(4) Where the defendant pleads not guilty of the offence charged but guilty of any other offence, whether or not it is an included offence, the court may, with the consent of the prosecutor, accept such plea of guilty and accordingly amend the information or substitute the offence to which the defendant pleads guilty. Plea of guilty to another offence

47.—(1) Subject to section 6, where the defendant pleads not guilty, the court shall hold the trial. Trial on plea of not guilty

(2) The defendant is entitled to make his full answer and defence. Right to defend

(3) The prosecutor or defendant, as the case may be, may examine and cross-examine witnesses. Right to examine witnesses

(4) The court may receive and act upon any facts agreed upon by the defendant and prosecutor without proof or evidence. Agreed facts

(5) Notwithstanding section 8 of *The Evidence Act*, the defendant is not a compellable witness for the prosecution. Defendant not compellable R.S.O. 1970, c. 151

48.—(1) The court may receive and consider evidence taken before the same justice on a different charge against the same defendant, with the consent of the parties. Evidence taken on another charge

(2) Where a certificate as to the content of an official record is, by any Act, made admissible in evidence as *prima facie* proof, the court may, for the purpose of deciding whether the defendant is the person referred to in the certificate, receive and base its decision upon information it considers credible or trustworthy in the circumstances of each case. Certificate as evidence

(3) The burden of proving that an authorization, exception, exemption or qualification prescribed by law operates in favour of the defendant is on the defendant, and the prosecutor is not required, except by way of rebuttal, to prove that the authorization, exception, exemption or qualification does not operate in favour of the defendant, whether or not it is set out in the information. Burden of proving exception, etc.

49.—(1) The court may order that an exhibit be kept in such custody and place as, in the opinion of the court, is appropriate for its preservation. Exhibits

Release of exhibits

(2) Where any thing is filed as an exhibit in a proceeding, the clerk may release the exhibit upon the consent of the parties at any time after the trial or, in the absence of consent, may return the exhibit to the party tendering it after the disposition of any appeal in the proceeding or, where an appeal is not taken, after the expiration of the time for appeal.

Adjournments

50.—(1) The court may, from time to time, adjourn a trial or hearing but, where the defendant is in custody, an adjournment shall not be for a period longer than eight days without the consent of the defendant.

Early resumption

(2) A trial or hearing that is adjourned for a period may be resumed before the expiration of the period with the consent of the defendant and the prosecutor.

Appearance by defendant

51.—(1) A defendant may appear and act personally or by counsel or agent.

Appearance by corporation

(2) A defendant that is a corporation shall appear and act by counsel or agent.

Exclusion of agents

(3) The court may bar any person from appearing as an agent who is not a barrister and solicitor entitled to practise in Ontario if the court finds that the person is not competent properly to represent or advise the person for whom he appears as agent or does not understand and comply with the duties and responsibilities of an agent.

Compelling attendance of defendant

52. Notwithstanding that a defendant appears by counsel or agent, the court may order the defendant to attend personally, and, where it appears to be necessary to do so, may issue a summons in the prescribed form.

Excluding defendant from hearing

53.—(1) The court may cause the defendant to be removed and to be kept out of court,

(*a*) when he misconducts himself by interrupting the proceedings so that to continue in his presence would not be feasible; or

(*b*) where, during the trial of an issue as to whether the defendant is, because of mental disorder, unable to conduct his defence, the court is satisfied that failure to do so might have an adverse effect on the mental health of the defendant.

(2) The court may exclude the public or any member of the public from a hearing where, in the opinion of the court, it is necessary to do so, Excluding public from hearing

(*a*) for the maintenance of order in the courtroom;

(*b*) to protect the reputation of a minor; or

(*c*) to remove an influence that might affect the testimony of a witness.

(3) Where the court considers it necessary to do so to protect the reputation of a minor, the court may make an order prohibiting the publication or broadcast of the identity of the minor or of the evidence or any part of the evidence taken at the hearing. Prohibition of publication of evidence

54.—(1) Where the defendant appears for a hearing and the prosecutor, having had due notice, does not appear, the court may dismiss the charge or may adjourn the hearing to another time upon such terms as it considers proper. Failure of prosecutor to appear

(2) Where the prosecutor does not appear at the time and place appointed for the resumption of an adjourned hearing under subsection 1, the court may dismiss the charge. Idem

(3) Where a hearing is adjourned under subsection 1 or a charge is dismissed under subsection 2, the court may make an order under section 61 for the payment of costs. Costs

(4) Where a charge is dismissed under subsection 1 or 2, the court may, if requested by the defendant, draw up an order of dismissal stating the grounds therefor and shall give the defendant a certified copy of the order of dismissal which is, without further proof, a bar to any subsequent proceedings against the defendant in respect of the same cause. Written order of dismissal

55.—(1) Where a defendant does not appear at the time and place appointed for a hearing and it is proved by the prosecutor, having been given a reasonable opportunity to do so, that a summons was served, a notice of trial was given under Part I or II, an undertaking to appear was given or a recognizance to appear was entered into, as the case may be, or where the defendant does not appear upon the resumption of a hearing that has been adjourned, the court, *Ex parte* conviction

(*a*) may proceed *ex parte* to hear and determine the proceedings in the absence of the defendant;

(*b*) may, if it thinks fit, adjourn the hearing and issue a summons to appear or issue a warrant in the prescribed form for the arrest of the defendant; or

(*c*) may, where the defendant does not appear in response to the summons or warrant on the date to which the hearing is adjourned, proceed under clause *a* or *b*.

Where convicted *ex parte*

(2) Where, the court proceeds under clause *a* of subsection 1, no proceeding arising out of the failure of the defendant to appear at the time and place appointed for the hearing or for the resumption of the hearing shall be instituted or if instituted shall be proceeded with, except with the consent of the Attorney General or his agent.

Included offences

56. Where the commission of the offence charged includes the commission of another offence, the defendant may be convicted of an offence so included that is proved, notwithstanding that the whole offence charged is not proved.

Sentencing

Pre-sentence report

57.—(1) Where a defendant is convicted of an offence in a proceeding commenced by information, the court may direct a probation officer to prepare and file with the court a report in writing relating to the defendant for the purpose of assisting the court in imposing sentence.

Service

(2) Where a report is filed with the court under subsection 1, the clerk of the court shall cause a copy of the report to be provided to the defendant or his counsel or agent and to the prosecutor.

Submissions as to sentence

58.—(1) Where a defendant who appears is convicted of an offence, the court shall give the prosecutor and the counsel or agent for the defendant an opportunity to make submissions as to sentence and, where the defendant has no counsel or agent, the court shall ask him if he has anything to say before sentence is passed upon him.

Omission to comply

(2) The omission to comply with subsection 1 does not affect the validity of the proceeding.

Inquiries by court

(3) Where a defendant is convicted of an offence, the court may make such inquiries, on oath or otherwise, of and concerning the defendant as it considers desirable, including his economic circumstances, but the defendant shall not be compelled to answer.

(4) A certificate setting out with reasonable particularity the finding of guilt or acquittal or conviction and sentence in Canada of a person signed by, Proof of previous conviction

(*a*) the person who made the adjudication; or

(*b*) the clerk of the court in which the adjudication was made,

is, upon the court being satisfied that the defendant is the person referred to in the certificate, admissible in evidence and is *prima facie* proof of the facts stated therein without proof of the signature or the official character of the person appearing to have signed the certificate.

59. In determining the sentence to be imposed on a person convicted of an offence, the justice may take into account any time spent in custody by the person as a result of the offence. Time spent in custody considered

60.—(1) No penalty prescribed for an offence is a minimum penalty unless it is specifically declared to be a minimum. Provision for minimum penalty

(2) Notwithstanding that the provision that creates the penalty for an offence prescribes a minimum fine, where in the opinion of the court exceptional circumstances exist so that to impose the minimum fine would be unduly oppressive or otherwise not in the interests of justice, the court may impose a fine that is less than the minimum or suspend the sentence. Relief against minimum fine

(3) Where a minimum penalty is prescribed for an offence and the minimum penalty includes imprisonment, the court may, notwithstanding the prescribed penalty, impose a fine of not more than $2,000 in lieu of imprisonment. Idem, re imprisonment

61.—(1) Upon conviction, the defendant is liable to pay to the court an amount by way of costs that is fixed by the regulations. Fixed costs on conviction

(2) The court may, in its discretion, order costs towards fees and expenses reasonably incurred by or on behalf of witnesses in amounts not exceeding the maximum fixed by the regulations, to be paid, Costs respecting witnesses

(*a*) to the court or prosecutor by the defendant; or

(*b*) to the defendant by the person who laid the information or issued the certificate, as the case may be,

but where the proceeding is commenced by means of a certificate, the total of such costs shall not exceed $100.

Costs collectable as a fine

(3) Costs payable under this section shall be deemed to be a fine for the purpose of enforcing payment.

General penalty

62.—(1) Except where otherwise expressly provided by law, every person who is convicted of an offence is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than six months, or to both.

Amendment of subs. 1

(2) Subsection 1 is amended by striking out "or to imprisonment for a term of not more than six months, or to both" in the third and fourth lines.

Effective date of amendment

(3) Subsection 2 does not come into force until the 1st day of January, 1981.

Minute of conviction

63. Where a court convicts a defendant or dismisses a charge, a minute of the dismissal or conviction and sentence shall be made by the court, and, upon request by the defendant or the prosecutor or by the Attorney General or his agent, the court shall cause a copy thereof certified by the clerk of the court to be delivered to the person making the request.

Time when imprisonment starts

64.—(1) The term of imprisonment imposed by sentence shall, unless otherwise directed in the sentence, commence on the day on which the convicted person is taken into custody thereunder, but no time during which the convicted person is imprisoned or out on bail before sentence shall be reckoned as part of the term of imprisonment to which he is sentenced.

Idem

(2) Where the court imposes imprisonment, the court may order custody to commence on a day not later than thirty days after the day of sentencing.

Sentences consecutive

65. Where a person is subject to more than one term of imprisonment at the same time, the terms shall be served consecutively except in so far as the court has ordered a term to be served concurrently with any other term of imprisonment.

Authority of warrant

66.—(1) A warrant of committal is sufficient authority,

(*a*) for the conveyance of the prisoner in custody for the purpose of committal under the warrant; and

(*b*) for the reception and detention of the prisoner by keepers of prisons in accordance with the terms of the warrant.

Conveyance of prisoner

(2) A person to whom a warrant of committal is directed shall convey the prisoner to the correctional institution named in the warrant.

Prisoner subject to rules of institution

(3) A sentence of imprisonment shall be served in accordance with the enactments and rules that govern the institution to which the prisoner is sentenced.

When fine due

67.—(1) A fine becomes due and payable fifteen days after its imposition.

Extension of time for payment of a fine

(2) Where the court imposes a fine, the court shall ask the defendant if he wishes an extension of the time for payment of the fine.

Inquiries

(3) Where the defendant requests an extension of the time for payment of the fine, the court may make such inquiries, on oath or otherwise, of and concerning the defendant as the court considers desirable, but the defendant shall not be compelled to answer.

Granting of extension

(4) Unless the court finds that the request for extension of time is not made in good faith or that the extension would likely be used to evade payment, the court shall extend the time for payment by ordering periodic payments or otherwise.

Notice where convicted *in absentia*

(5) Where a fine is imposed in the absence of the defendant, the clerk of the court shall give the defendant notice of the fine and its due date and of his right to apply for an extension of the time for payment under subsection 6.

Further application for extension

(6) The defendant may, at any time by application in the prescribed form filed in the office of the court, request an extension or further extension of time for payment of a fine and the application shall be determined by a justice and the justice has the same powers in respect of the application as the court has under subsections 3 and 4.

Regulation for work credits for fines

68. The Lieutenant Governor in Council may make regulations establishing a program to permit the payment of fines by means of credits for work performed, and, for the purpose and without restricting the generality of the foregoing may,

(*a*) prescribe classes of work and the conditions under which they are to be performed;

(*b*) prescribe a system of credits;

(*c*) provide for any matter necessary for the effective administration of the program,

and any regulation may limit its application to any part or parts of Ontario.

Civil enforcement of fines

69.—(1) When the payment of a fine is in default, the clerk of the court may complete a certificate in the prescribed form as to the imposition of the fine and the amount remaining unpaid and file the certificate in a court of competent jurisdiction and upon filing, the certificate shall be deemed to be an order or judgment of that court for the purposes of enforcement.

Limitation

(2) A certificate shall not be filed under subsection 1 after two years after the default in respect of which it is issued.

Certificate of discharge

(3) Where a certificate has been filed under subsection 1 and the fine is fully paid, the clerk shall file a certificate of payment upon which the certificate of default is discharged and, where a writ of execution has been filed with the sheriff, the clerk shall file a certificate of payment with the sheriff, upon which the writ is cancelled.

Default

70.—(1) The payment of a fine is in default when any part of the fine is due and unpaid for fifteen days or more.

Order on default

(2) Where a justice is satisfied that payment of a fine is in default, the justice,

(*a*) shall order that any permit, licence, registration or privilege in respect of which a suspension is authorized by or under any Act for non-payment of the fine be suspended, not renewed or not issued until the fine is paid; and

(*b*) may direct the clerk of the court to proceed with civil enforcement under section 69.

Imprisonment for non-payment of fine

(3) A justice may issue a warrant in the prescribed form for the committal of the defendant where,

(*a*) an order or direction under clause *a* of subsection 2 has not resulted in payment within a time that is reasonable in the circumstances;

(*b*) all other reasonable methods of collecting the fine have been tried and failed or, in the opinion of the justice, would not likely result in payment within a reasonable time in the circumstances; and

(*c*) the defendant has been given fifteen days notice of the intent to issue a warrant and has had an opportunity to be heard.

Provision on conviction for imprisonment in default

(4) In exceptional circumstances where, in the opinion of the court imposing the fine, to proceed under subsection 3 would defeat the ends of justice, the court may,

(*a*) order that no warrant of committal be issued under subsection 3; or

(*b*) order imprisonment in default of payment of the fine and that no extension of time for payment be granted.

Term of imprisonment

(5) Imprisonment under a warrant issued under subsection 3 or 4 shall be for three days, plus one day for each $25 or part thereof that is in default, subject to a maximum period of,

(*a*) ninety days; or

(*b*) half of the maximum imprisonment, if any, provided for the offence,

whichever is the greater.

Effect of payments

(6) Any payment made after a warrant is issued under subsection 3 or 4 shall reduce the term by the number of days that is in the same proportion to the number of days in the term as the amount paid bears to the total fine and no amount offered in part payment of a fine shall be accepted unless it is sufficient to secure reduction of sentence of one day, or a multiple thereof.

Suspension of fine on conditions

71. Where an Act provides that a fine may be suspended subject to the performance of a condition,

(*a*) the period of suspension shall be fixed by the court and shall be for not more than one year;

(*b*) the court shall provide in its order of suspension the method of proving the performance of the condition;

(*c*) the suspension is in addition to and not in lieu of any other power of the court in respect of the fine; and

(*d*) the fine is not in default until fifteen days have elapsed after notice that the period of suspension has expired is given to the defendant.

Probation order

72.—(1) Where a defendant is convicted of an offence in a proceeding commenced by information, the court may, having regard to the age, character and background of the defendant, the nature of the offence and the circumstances surrounding its commission,

(*a*) suspend the passing of sentence and direct that the defendant comply with the conditions prescribed in a probation order;

(*b*) in addition to fining the defendant or sentencing him to imprisonment, whether in default of payment of a fine or otherwise, direct that the defendant comply with the conditions prescribed in a probation order; or

(*c*) where it imposes a sentence of imprisonment on the defendant, whether in default of payment of a fine or otherwise, that does not exceed ninety days, order that the sentence be served intermittently at such times as are specified in the order and direct that the defendant, at all times when he is not in confinement pursuant to such order, comply with the conditions prescribed in a probation order.

Statutory conditions of order

(2) A probation order shall be deemed to contain the conditions that,

(*a*) the defendant not commit the same or any related or similar offence, or any offence under a statute of Canada or Ontario or any other province of Canada that is punishable by imprisonment;

(*b*) the defendant appear before the court as and when required; and

(*c*) the defendant notify the court of any change in his address.

Conditions imposed by court

(3) In addition to the conditions set out in subsection 2, the court may prescribe the following conditions in a probation order,

(*a*) that the defendant satisfy any compensation or restitution that is required or authorized by an Act;

(*b*) with the consent of the defendant and where the conviction is of an offence that is punishable by imprisonment that the defendant perform a community service as set out in the order;

(*c*) where the conviction is of an offence punishable by imprisonment, such other conditions relating to the circumstances of the offence and of the defendant that contributed to the commission of the offence as the court considers appropriate to prevent similar unlawful conduct or to contribute to the rehabilitation of the defendant; or

(*d*) where considered necessary for the purpose of implementing the conditions of the probation order, that the defendant report to a responsible person designated by the court and, in addition, where the circumstances warrant it, that the defendant be under the supervision of the person to whom he is required to report.

Form of order

(4) A probation order shall be in the prescribed form and the court that makes the order shall specify therein the period for which it is to remain in force, which shall not be for more than two years from the date when the order takes effect.

Notice of order

(5) Where the court makes a probation order, it shall cause a copy of the order and a copy of section 75 to be given to the defendant.

Regulations for community service orders

(6) The Lieutenant Governor in Council may make regulations governing restitution, compensation and community service orders, including their terms and conditions.

When order comes into force

73.—(1) A probation order comes into force,

(*a*) on the date on which the order is made; or

(*b*) where the defendant is sentenced to imprisonment other than a sentence to be served intermittently, upon the expiration of that sentence.

Continuation in force

(2) Subject to section 75, where a defendant who is bound by a probation order is convicted of an offence or is imprisoned in default of payment of a fine, the order continues in force except in so far as the sentence or imprisonment

renders it impossible for the defendant to comply for the time being with the order.

Variation of probation order

74. The court may, at any time upon the application of the defendant or prosecutor with notice to the other, after a hearing or, with the consent of the parties, without a hearing,

(*a*) make any changes in or additions to the conditions prescribed in the order that in the opinion of the court are rendered desirable by a change in circumstances;

(*b*) relieve the defendant, either absolutely or upon such terms or for such period as the court considers desirable, of compliance with any condition described in any of the clauses in subsection 3 of section 72 that is prescribed in the order; or

(*c*) terminate the order or decrease the period for which the probation order is to remain in force,

and the court shall thereupon endorse the probation order accordingly and, if it changes or adds to the conditions prescribed in the order, inform the defendant of its action and give him a copy of the order so endorsed.

Breach of probation order

75. Where a defendant who is bound by a probation order is convicted of an offence constituting a breach of condition of the order and,

(*a*) the time within which he may appeal or apply for leave to appeal against that conviction has expired and he has not taken an appeal or applied for leave to appeal;

(*b*) he has taken an appeal or applied for leave to appeal against the conviction and the appeal or application for leave has been dismissed or abandoned; or

(*c*) he has given written notice to the court that convicted him that he elects not to appeal,

or where the defendant otherwise wilfully fails or refuses to comply with the order, he is guilty of an offence and upon conviction the court may,

(*d*) impose a fine of not more than $1,000 or imprisonment for a term of not more than thirty days, or both, and in lieu of or in addition to the penalty, continue the probation order with such changes or additions and for such extended term, not exceeding an additional year, as the court considers reasonable; or

(*e*) where the justice presiding is the justice who made the original order, in lieu of imposing the penalty under clause *d*, revoke the probation order and impose the sentence the passing of which was suspended upon the making of the probation order.

PART V

GENERAL PROVISIONS

Limitation

76.—(1) Proceedings shall not be commenced after the expiration of any limitation period prescribed for the offence or, where no limitation period is prescribed, after six months after the date on which the offence was, or is alleged to have been, committed.

Extension

(2) A limitation period may be extended by a justice with the consent of the defendant.

Parties to offence

77.—(1) Every person is a party to an offence who,

(*a*) actually commits it,

(*b*) does or omits to do anything for the purpose of aiding any person to commit it; or

(*c*) abets any person in committing it.

Common purpose

(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to the offence.

Counselling

78.—(1) Where a person counsels or procures another person to be a party to an offence and that other person is afterwards a party to the offence, the person who counselled or procured is a party to the offence, notwithstanding that the offence was committed in a way different from that which was counselled or procured.

Idem

(2) Every person who counsels or procures another person to be a party to an offence is a party to every offence that the other commits in consequence of the counselling or procuring that the person who counselled or procured knew or ought to have known was likely to be committed in consequence of the counselling or procuring.

Computation of age

79. In the absence of other evidence, or by way of corroboration of other evidence, a justice may infer the age of a person from his appearance.

Common law defences

80. Every rule and principle of the common law that renders any circumstance a justification or excuse for an act or a defence to a charge continues in force and applies in respect of offences, except in so far as they are altered by or inconsistent with this or any other Act.

Ignorance of the law

81. Ignorance of the law by a person who commits an offence is not an excuse for committing the offence.

Counsel or agent

82. A defendant may act by his counsel or agent.

Recording of evidence

83.—(1) Proceedings in which evidence is taken shall be recorded.

Evidence under oath

(2) Evidence under this Act shall be taken under oath, except as otherwise provided by law.

Interpreters

84.—(1) A justice may authorize a person to act as interpreter in a proceeding before him where the person swears the prescribed oath and, in the opinion of the justice, is competent.

Idem

(2) A judge may authorize a person to act as interpreter in proceedings under this Act where he swears the prescribed oath and, in the opinion of the judge is competent and likely to be readily available.

Extension of time

85. Any time prescribed by this Act or the regulations made thereunder or by the rules of the court for doing any thing other than commencing or recommencing proceedings may be extended by the court in which the proceeding is conducted, whether or not the prescribed time has expired.

Penalty for false statements

86. Every person who makes an assertion of fact in a statement or entry in a document or form for use under this Act knowing that the assertion is false is guilty of an offence and on conviction is liable to a fine of not more than $1,000.

87.—(1) Except as otherwise provided by this Act or the rules of the court, any notice or document required or authorized to be given or delivered under this Act or the rules of the court is sufficiently given or delivered if delivered, whether personally or by mail. Delivery

(2) Where a notice or document that is required or authorized to be given or delivered to a person under this Act is mailed to the person at his last known address appearing on the records of the court in the proceeding, there is a rebuttable presumption that the notice or document is delivered to the person. Idem

88. No civil remedy for an act or omission is suspended or affected for the reason that the act or omission is an offence. Civil remedies preserved

89. Any action authorized or required by this Act is not invalid for the reason only that the action was taken on a non-juridical day. Process on holidays

90.—(1) The validity of any proceeding is not affected by, Irregularities in form

(*a*) any irregularity or defect in the substance or form of the summons, warrant, offence notice, parking infraction notice, undertaking to appear or recognizance; or

(*b*) any variance between the charge set out in the summons, warrant, parking infraction notice, offence notice undertaking to appear or recognizance and the charge set out in the information or certificate.

(2) Where it appears to the court that the defendant has been misled by any irregularity, defect or variance mentioned in subsection 1, the court may adjourn the hearing and may make such order as the court considers appropriate, including an order under section 61 for the payment of costs. Adjournment to meet irregularities

91. The Lieutenant Governor in Council may make regulations, Regulations

(*a*) prescribing any matter referred to in this Act as prescribed by the regulations;

(*b*) prescribing the form of certificate as to ownership of a motor vehicle given by the Registrar under subsection 2 of section 150 of *The Highway Traffic Act* for the purpose of proceedings under this Act; R.S.O. 1970, c. 202

(*c*) providing for the extension of times prescribed by or under this Act or the rules in the event of a disruption in postal services;

(*d*) requiring the payment of fees upon the filing of anything required or permitted to be filed under this Act or the rules and fixing the amounts thereof, and providing for the waiver of the payment of a fee by a justice, or by a judge under Part VI, in such circumstances and under such conditions as are set out in the regulations;

(*e*) fixing costs payable upon conviction and referred to in subsection 1 of section 61;

(*f*) fixing the items in respect of which costs may be awarded under subsection 2 of section 61 and prescribing the maximum amounts that may be awarded in respect of each item.

PART VI

APPEALS AND REVIEW

Interpretation

92.—(1) In this Part,

(*a*) "counsel" when used in respect of proceedings in a provincial court (criminal division) includes an agent;

(*b*) "court" means the court to which an appeal is or may be taken under this Part;

(*c*) "judge" means a judge of the court to which an appeal is or may be taken under this Part;

(*d*) "rules" means the rules made under section 123;

(*e*) "sentence" includes any order or disposition consequent upon a conviction and an order as to costs.

References to Court of Appeal

R.S.O. 1970, c. 228

(2) In this Part, a reference to the Court of Appeal means the Court of Appeal notwithstanding subsection 2 of section 17 of *The Judicature Act*.

APPEALS UNDER PART III

Appeal

93.—(1) Where a proceeding is commenced by information under Part III, the defendant or the prosecutor or the

Attorney General by way of intervention may appeal from a conviction or dismissal or from a finding as to ability, because of mental disorder, to conduct a defence or as to sentence.

Appeal court

(2) An appeal under subsection 1 shall be,

(*a*) where the appeal is from the decision of a justice of the peace, to the provincial court (criminal division) of the county or district in which the adjudication was made; or

(*b*) where the appeal is from the decision of a provincial judge, to the county or district court of the county or district in which the adjudication was made.

Notice of appeal

(3) The appellant shall give notice of appeal in such manner and within such period as is provided by the rules.

Custody pending appeal

94. A defendant who appeals shall, if he is in custody, remain in custody, but a judge may order his release upon any of the conditions set out in subsection 2 of section 134.

Payment of fine before appeal

95.—(1) A notice of appeal by a defendant shall not be accepted for filing if the defendant has not paid in full the fine imposed by the decision appealed from.

Exception with recognizance

(2) A judge may waive compliance with subsection 1 and order that the appellant enter into a recognizance to appear on the appeal, and the recognizance shall be in such amount, with or without sureties, as the judge directs.

Stay

96. The filing of a notice of appeal does not stay the conviction unless a judge so orders.

Fixing of date where appellant in custody

97.—(1) Where an appellant is in custody pending the hearing of the appeal and the hearing of the appeal has not commenced within thirty days from the day on which notice of the appeal was given, the person having custody of the appellant shall apply to a judge to fix a date for the hearing of the appeal.

Idem

(2) Upon receiving an application under subsection 1, the judge shall, after giving the prosecutor a reasonable opportunity to be heard, fix a date for the hearing of the appeal and give such directions as he thinks appropriate for expediting the hearing of the appeal.

Payment of fine not waiver

98. A person does not waive his right of appeal by reason only that he pays the fine or complies with any order imposed upon conviction.

Transmittal of material

99. Where a notice of appeal has been filed, the clerk of the appeal court shall notify the clerk of the provincial offences court appealed from of the appeal and, upon receipt of the notification, the clerk of the provincial offences court shall transmit the order appealed from and transmit or transfer custody of all other material in his possession or control relevant to the proceedings to the clerk of the appeal court to be kept with the records of the appeal court.

Powers of court

100.—(1) The court may, where it considers it to be in the interests of justice,

(*a*) order the production of any writing, exhibit or other thing relevant to the appeal;

(*b*) order any witness who would have been a compellable witness at the trial, whether or not he was called at the trial,

(i) to attend and be examined before the court, or

(ii) to be examined in the manner provided by the rules before a judge of the court, or before any officer of the court or justice of the peace or other person appointed by the court for the purpose;

(*c*) admit, as evidence, an examination that is taken under subclause ii of clause *b*;

(*d*) receive the evidence, if tendered, of any witness;

(*e*) order that any question arising on the appeal that,

(i) involves prolonged examination of writings or accounts, or scientific investigation, and

(ii) cannot in the opinion of the court conveniently be inquired into before the court,

be referred for inquiry and report, in the manner provided by the rules, to a special commissioner appointed by the court; and

(*f*) act upon the report of a commissioner who is appointed under clause *e* in so far as the court thinks fit to do so.

Right of appellant

(2) In proceedings under this section, the parties or their counsel are entitled to examine or cross-examine witnesses

and, in an inquiry under clause *e* of subsection 1, are entitled to be present during the inquiry and to adduce evidence and to be heard.

101.—(1) An appellant may appear and act personally or by counsel. Right to counsel

(2) An appellant who is in custody as a result of the decision appealed from is entitled to be present at the hearing of the appeal. Attendance while in custody

(3) The power of a court to impose sentence may be exercised notwithstanding that the appellant is not present. Sentencing in absence

102. An appellant may present his case on appeal and his argument in writing instead of orally, and the court shall consider any case or argument so presented. Written argument

103.—(1) On the hearing of an appeal against a conviction or against a finding as to the ability, because of mental disorder, to conduct a defence, the court by order, Powers on appeal against conviction

(*a*) may allow the appeal where it is of the opinion that,

(i) the finding should be set aside on the ground that it is unreasonable or cannot be supported by the evidence,

(ii) the judgment of the trial court should be set aside on the ground of a wrong decision on a question of law, or

(iii) on any ground, there was a miscarriage of justice; or

(*b*) may dismiss the appeal where,

(i) the court is of the opinion that the appellant, although he was not properly convicted on a count or part of an information, was properly convicted on another count or part of the information,

(ii) the appeal is not decided in favour of the appellant on any ground mentioned in clause *a*, or

(iii) notwithstanding that the court is of the opinion that on any ground mentioned in subclause ii of clause *a* the appeal might be decided in favour of the appellant, it is of the opinion that no substantial wrong or miscarriage of justice has occurred.

Idem

(2) Where the court allows an appeal under clause *a* of subsection 1, it shall,

(*a*) where the appeal is from a conviction,

(i) direct a finding of acquittal to be entered, or

(ii) order a new trial; or

(*b*) where the appeal is from a finding as to the ability, because of mental disorder, to conduct a defence, order a new trial, subject to section 45.

Idem

(3) Where the court dismisses an appeal under clause *b* of subsection 1, it may substitute the decision that in its opinion should have been made and affirm the sentence passed by the trial court or impose a sentence that is warranted in law.

Powers on appeal against acquittal

104. Where an appeal is from an acquittal, the court may by order,

(*a*) dismiss the appeal; or

(*b*) allow the appeal, set aside the finding and,

(i) order a new trial, or

(ii) enter a finding of guilt with respect to the offence of which, in its opinion, the appellant should have been found guilty, and pass a sentence that is warranted in law.

Appeal against sentence

105.—(1) Where an appeal is taken against sentence, the court shall consider the fitness of the sentence appealed from and may, upon such evidence, if any, as it thinks fit to require or receive, by order,

(*a*) dismiss the appeal; or

(*b*) vary the sentence within the limits prescribed by law for the offence of which the defendant was convicted,

and, in making any order under clause *b*, the court may take into account any time spent in custody by the defendant as a result of the offence.

(2) A judgment of a court that varies a sentence has the same force and effect as if it were a sentence passed by the trial court. Variance of sentence

106. Where one sentence is passed upon a finding of guilt on two or more counts, the sentence is good if any of the counts would have justified the sentence. One sentence on more than one count

107.—(1) Judgment shall not be given in favour of an appellant based on any alleged defect in the substance or form of an information, certificate or process or any variance between the information, certificate or process and the evidence adduced at trial unless it is shown that objection was taken at the trial and that, in the case of a variance, an adjournment of the trial was refused notwithstanding that the variance had misled the appellant. Appeal based on defect in information or process

(2) Where an appeal is based on a defect in a conviction or an order, judgment shall not be given in favour of the appellant, but the court shall make an order curing the defect. Idem

108. Where a court exercises any of the powers conferred by sections 100 to 107, it may make any order, in addition, that justice requires. Additional orders

109.—(1) Where a court orders a new trial, it shall be held in a provincial offences court presided over by a justice other than the justice who tried the defendant in the first instance unless the appeal court directs that the new trial be held before the justice who tried the defendant in the first instance. New trial

(2) Where a court orders a new trial, it may make such order for the release or detention of the appellant pending such trial as may be made by a justice under subsection 2 of section 134 and the order may be enforced in the same manner as if it had been made by a justice under that subsection. Order for release

110.—(1) Where, because of the condition of the record of the trial in the trial court or for any other reason, the court, upon application of the appellant or respondent, is of the opinion that the interests of justice would be better served by hearing and determining the appeal by holding a new trial in the court, the court may order that the appeal Trial *de novo*

shall be heard by way of a new trial in the court in accordance with the rules, and for this purpose this Act applies, with necessary modifications, in the same manner as to a proceeding in a provincial offences court.

Evidence

(2) The court may, for the purpose of hearing and determining an appeal under subsection 1, permit the evidence of any witness taken before the trial court to be read if that evidence has been authenticated and if,

(*a*) the appellant and respondent consent;

(*b*) the court is satisfied that the attendance of the witness cannot reasonably be obtained; or

(*c*) by reason of the formal nature of the evidence or otherwise the court is satisfied that the opposite party will not be prejudiced,

and any evidence that is read under the authority of this subsection has the same force and effect as if the witness had given the evidence before the court.

Dismissal or abandonment

111. The court may, upon proof that notice of an appeal has been given and that,

(*a*) the appellant has failed to comply with any order made under section 94 or 95 or with the conditions of any recognizance entered into under either of those sections; or

(*b*) the appeal has not been proceeded with or has been abandoned,

order that the appeal be dismissed.

Costs

112.—(1) Where an appeal is heard and determined or is abandoned or is dismissed for want of prosecution, the court may make any order with respect to costs that it considers just and reasonable.

Payment

(2) Where the court orders the appellant or respondent to pay costs, the order shall direct that the costs be paid to the clerk of the trial court, to be paid by him to the person entitled to them, and shall fix the period within which the costs shall be paid.

Enforcement

(3) Costs ordered to be paid under this section by a person other than a prosecutor acting on behalf of the Crown shall

be deemed to be a fine for the purpose of enforcing its payment.

Implementation of appeal court order

113. An order or judgment of the appeal court shall be implemented or enforced by the trial court and the clerk of the appeal court shall send to the clerk of the trial court the order and all writings relating thereto.

Appeal to Court of Appeal

114.—(1) A defendant or the prosecutor or the Attorney General by way of intervention may appeal from the judgment of the court to the Court of Appeal, with leave of a justice of appeal on special grounds, upon any question of law alone or as to sentence in accordance with the rules made under section 123.

Grounds for leave

(2) No leave to appeal shall be granted under subsection 1 unless the justice of appeal considers that in the particular circumstances of the case it is essential in the public interest or for the due administration of justice that leave be granted.

Custody pending appeal

115. A defendant who appeals shall, if he is in custody, remain in custody, but a judge may order his release upon any of the conditions set out in subsection 2 of section 134.

Transfer of record

116. Where an application for leave to appeal is made, the Registrar of the Court of Appeal shall notify the clerk of the court appealed from of the application and, upon receipt of the notification, the clerk of the court shall transmit to the Registrar all the material forming the record including any other relevant material requested by a justice of appeal.

Application of ss. 98, 100-109, 111 (*b*), 112

117. Sections 98, 100, 101, 102, 103, 104, 105, 106, 107, 108 and 109, clause *b* of section 111 and section 112 apply, with necessary modifications, to appeals to the Court of Appeal under section 114.

APPEALS UNDER PARTS I AND II

Appeal

118.—(1) A defendant or the prosecutor or the Attorney General by way of intervention is entitled to appeal an acquittal, conviction or sentence in a proceeding commenced by certificate under Part I or II and the appeal shall be to the provincial court (criminal division) of the county or district in which the adjudication was made.

Application for appeal

(2) A notice of appeal shall be in the prescribed form and shall state the reasons why the appeal is taken and shall be filed with the clerk of the provincial court (criminal division)

within fifteen days after the making of the decision appealed from, in accordance with the rules.

Notice of hearing

(3) The clerk shall, as soon as is practicable, give a notice to the defendant and prosecutor of the time and place of the hearing of the appeal.

Conduct of appeal

119.—(1) Upon an appeal, the court shall give the parties an opportunity to be heard for the purpose of determining the issues and may, where the circumstances warrant it, make such inquiries as are necessary to ensure that the issues are fully and effectively defined.

Review

(2) An appeal shall be conducted by means of a review in the provincial court (criminal division) of the county or district in which the adjudication was made.

Evidence

(3) In determining a review, the court may,

(*a*) hear or rehear the recorded evidence or any part thereof and may require any party to provide a transcript of the evidence, or any part thereof, or to produce any further exhibit;

(*b*) receive the evidence of any witness whether or not the witness gave evidence at the trial;

(*c*) require the justice presiding at the trial to report in writing on any matter specified in the request; or

(*d*) receive and act upon statements of agreed facts or admissions.

Dismissal on abandonment

120. Where an appeal has not been proceeded with or abandoned, the court may order that the appeal be dismissed.

Powers of court on appeal

121.—(1) Upon an appeal, the court may affirm, reverse or vary the decision appealed from or where, in the opinion of the court, it is necessary to do so to satisfy the ends of justice, direct a new trial.

New trial

(2) Where the court directs a new trial, it shall be held in the provincial offences court presided over by a justice other than the justice who tried the defendant in the first instance, but the appeal court may, with the consent of the parties to the appeal, direct that the new trial be held before the justice who tried the defendant in the first instance or before the judge who directs the new trial.

(3) Upon an appeal, the court may make an order under section 61 for the payment of costs incurred on the appeal, and subsection 3 thereof applies to the order in the same manner as to an order of a provincial offences court. Costs

122.—(1) An appeal lies from the judgment of the provincial court (criminal division) to the Court of Appeal, with leave of a justice of appeal, on special grounds, upon any question of law alone in accordance with the rules made under section 123. Appeal to Court of Appeal

(2) No leave to appeal shall be granted under subsection 1 unless the justice of appeal considers that in the particular circumstances of the case it is essential in the public interest or for the due administration of justice that leave be granted. Grounds for leave

(3) Upon an appeal under this section, the Court of Appeal may make any order with respect to costs that it considers just and reasonable. Costs

RULES FOR APPEALS

123. The Lieutenant Governor in Council may make rules of court not inconsistent with this or any other Act for the conduct of and governing practices and procedures on appeals in the provincial courts (criminal division), the county and district courts and the Court of Appeal under this Act, and respecting any matter arising from or incidental to such appeals. Rules of court for appeals

REVIEW

124.—(1) Upon an application by way of originating notice, the High Court may by order grant any relief in respect of matters arising under this Act that the applicant would be entitled to in proceedings by way of an application for an order in the nature of mandamus, prohibition or *certiorari*. Application for relief in nature of mandamus, prohibition, *certiorari*

(2) Notice of an application under this section shall be served on, Notice of application

(*a*) the person whose act or omission gives rise to the application;

(*b*) any person who is a party to a proceeding that gives rise to the application; and

(*c*) the Attorney General.

Appeal

(3) An appeal lies to the Court of Appeal from an order made under this section.

Notice re *certiorari*

125.—(1) A notice under section 124 in respect of an application for relief in the nature of *certiorari* shall be given at least seven days and not more than ten days before the date fixed for the hearing of the application and the notice shall be served within thirty days after the occurrence of the act sought to be quashed.

Filing material

(2) Where a notice referred to in subsection 1 is served on the person making the decision, order or warrant or holding the proceeding giving rise to the application, such person shall forthwith file in the High Court for use on the application, all material concerning the subject-matter of the application.

Where appeal available

(3) No application shall be made to quash a conviction, order or ruling from which an appeal is provided by this Act, whether subject to leave or otherwise.

Substantial wrong

(4) On an application for relief in the nature of *certiorari*, the High Court shall not grant relief unless the court finds that a substantial wrong or miscarriage of justice has occurred, and the court may amend or validate any decision already made, with effect from such time and on such terms as the court considers proper.

Order for immunity from civil liability

(5) Where an application is made to quash a decision, order, warrant or proceeding made or held by a justice on the ground that he exceeded his jurisdiction, the High Court may, in quashing the decision, order, warrant or proceeding, order that no civil proceeding shall be taken against the justice or against any officer who acted under the decision, order or warrant or in the proceeding or under any warrant issued to enforce it.

Application for *habeas corpus*

126.—(1) Upon an application by way of originating notice, the High Court may by order grant any relief in respect of a matter arising under this Act that the applicant would be entitled to in proceedings by way of an application for an order in the nature of *habeas corpus*.

Procedure on application for relief in nature of *habeas corpus*

(2) Notice of an application under subsection 1 for relief in the nature of *habeas corpus* shall be served upon the person having custody of the person in respect of whom the application is made and upon the Attorney General and upon the

hearing of the application the presence before the High Court of the person in respect of whom the application was made may be dispensed with by consent, in which event the High Court may proceed to dispose of the matter forthwith as the justice of the case requires.

Application of R.S.O. 1970, c. 197

(3) Subject to subsections 1 and 2, *The Habeas Corpus Act* applies to applications under this section, but an application for relief in the nature of *certiorari* may be brought in aid of an application under this section.

1971, c. 48 and R.S.O. 1970, c. 228, ss. 69, 70 do not apply

(4) *The Judicial Review Procedure Act, 1971* and sections 69 and 70 of *The Judicature Act* do not apply to matters in respect of which an application may be made under section 124.

Costs

(5) A court to which an application or appeal is made under section 124 or this section may make any order with respect to costs that it considers just and reasonable.

PART VII

ARREST, BAIL AND SEARCH WARRANTS

Arrest

Officer in charge

127. In this Part, "officer in charge" means the police officer who is in charge of the lock-up or other place to which a person is taken after his arrest.

Execution of warrant

128.—(1) A warrant for the arrest of a person shall be executed by a police officer by arresting the person against whom the warrant is directed wherever he is found in Ontario.

Idem

(2) A police officer may arrest without warrant a person for whose arrest he has reasonable and probable grounds to believe that a warrant is in force in Ontario.

Arrest without warrant

129. Any person may arrest without warrant a person who he has reasonable and probable grounds to believe has committed an offence and is escaping from and freshly pursued by a police officer who has lawful authority to arrest that person, and, where the person who makes the arrest is not a police officer, shall forthwith deliver the person arrested to a police officer.

Use of force

130.—(1) Every police officer is, if he acts on reasonable and probable grounds, justified in using as much force as is necessary to do what he is required or authorized by law to do.

Use of force by citizen

(2) Every person upon whom a police officer calls for assistance is justified in using as much force as he believes on reasonable and probable grounds is necessary to render such assistance.

Immunity from civil liability

131. Where a person is wrongfully arrested, whether with or without a warrant, no action for damages shall be brought,

(*a*) against the police officer making the arrest if he believed in good faith and on reasonable and probable grounds that the person arrested was the person named in the warrant or was subject to arrest without warrant under the authority of an Act;

(*b*) against any person called upon to assist the police officer if such person believed that the police officer had the right to effect the arrest; or

(*c*) against any person required to detain the prisoner in custody if such person believes the arrest was lawfully made.

Production of process

132.—(1) It is the duty of every one who executes a process or warrant to have it with him, where it is feasible to do so, and to produce it when requested to do so.

Notice of reason for arrest

(2) It is the duty of every one who arrests a person, whether with or without warrant, to give notice to that person, where it is feasible to do so, of the reason for the arrest.

Bail

Release after arrest by officer

133.—(1) Where a police officer acting under a warrant or other power of arrest, arrests a person, the police officer shall, as soon as is practicable, release the person from custody after serving him with a summons or offence notice unless he has reasonable and probable grounds to believe that,

(*a*) it is necessary in the public interest for the person to be detained, having regard to all the circumstances including the need to,

(i) establish the identity of the person,

(ii) secure or preserve evidence of or relating to the offence, or

(iii) prevent the continuation or repetition of the offence or the commission of another offence; or

(*b*) the person arrested is ordinarily resident outside Ontario and will not respond to a summons or offence notice.

Release by officer in charge

(2) Where a defendant is not released from custody under subsection 1, the police officer shall deliver him to the officer in charge who shall, where in his opinion the conditions set out in clauses *a* and *b* of subsection 1 do not or no longer exist, release the defendant,

(*a*) upon serving him with a summons or offence notice;

(*b*) upon his entering into a recognizance in the prescribed form without sureties conditioned for his appearance in court.

Cash bail by non-resident

(3) Where the defendant is held for the reason only that he is not ordinarily resident in Ontario and it is believed that he will not respond to a summons or offence notice, the officer in charge may, in addition to anything required under subsection 2, require the defendant to deposit cash or other satisfactory negotiable security in an amount not to exceed,

(*a*) where the proceeding is commenced by certificate under Part I or II, the amount of the set fine for the offence or, if none, $300; or

(*b*) where the proceeding is commenced by information under Part III, $500.

Person in custody to be brought before justice

134.—(1) Where a defendant is not released from custody under section 133, the officer in charge shall, as soon as is practicable but in any event within twenty-four hours, bring him before a justice and the justice shall, unless a plea of guilty is taken, order that the defendant be released upon giving his undertaking to appear unless the prosecutor having been given an opportunity to do so shows cause why the detention of the defendant is justified to ensure his appearance in court or why an order under subsection 2 is justified for the same purpose.

Order for conditional release

(2) Subject to subsection 1, the justice may order the release of the defendant,

(*a*) upon his entering into a recognizance to appear with such conditions as are appropriate to ensure his appearance in court;

(*b*) where the offence is one punishable by imprisonment for twelve months or more, conditional upon his entering into a recognizance before a justice with sureties in such amount and with such conditions, if any, as are appropriate to ensure his appearance in court or, with the consent of the prosecutor, upon his depositing with the justice such sum of money or other valuable security as the order directs in an amount not exceeding,

(i) where the proceeding is commenced by certificate under Part I or II, the amount of the set fine for the offence or, if none, $300, or

(ii) where the proceeding is commenced by information under Part III, $1,000; or

(*c*) if the defendant is not ordinarily resident in Ontario, upon his entering into a recognizance before a justice, with or without sureties, in such amount and with such conditions, if any, as are appropriate to ensure his appearance in court, and depositing with the justice such sum of money or other valuable security as the order directs in an amount not exceeding,

(i) where the proceeding is commenced by certificate under Part I or II, the amount of the set fine for the offence or if none, $300, or

(ii) where the proceeding is commenced by information under Part III, $1,000.

Idem

(3) The justice shall not make an order under clause *b* or *c* of subsection 2 unless the prosecutor shows cause why an order under the immediately preceding clause should not be made.

Order for detention

(4) Where the prosecutor shows cause why the detention of the defendant in custody is justified to ensure his appearance in court, the justice shall order the defendant to be detained in custody until he is dealt with according to law.

Reasons

(5) The justice shall include in the record a statement of his reasons for his decision under subsection 1, 2 or 4.

Evidence at hearing

(6) In a proceeding under subsection 1, the justice may receive and base his decision upon information he considers

credible or trustworthy in the circumstances of each case except that the defendant shall not be examined or cross-examined in respect of the offence with which he is charged.

Adjournments

(7) A proceeding under subsection 1 shall not be adjourned for more than three days without the consent of the defendant.

Expediting trial of person in custody

135.—(1) Where a defendant is not released from custody under section 133 or 134, he shall be brought before the court forthwith and, in any event, within eight days.

Further orders

(2) The justice presiding upon any appearance of the defendant in court may, upon the application of the defendant or prosecutor, review any order made under section 134 and make such further or other order under section 134 as to him seems appropriate in the circumstances.

Appeal

136. A defendant or the prosecutor may appeal from an order or refusal to make an order under section 134 or 135 and the appeal shall be to the county or district court of the county or district in which the adjudication was made and shall be conducted in accordance with the rules made under section 123.

Appointment of agent for appearance

137.—(1) A person who is released upon deposit under subsection 3 of section 133 or clause *c* of subsection 2 of section 134 may appoint the clerk of the court to act as his agent, in the event that he does not appear to answer to the charge, for the purpose of entering a plea of guilty on his behalf and authorizing the clerk to apply the amount so deposited toward payment of the fine and costs imposed by the court upon the conviction, and the clerk shall act as agent under this subsection without fee.

Returns to court

(2) An officer in charge or justice who takes a recognizance, money or security under section 133 or 134 shall make a return thereof to the court where the defendant is required to appear.

Returns to sureties

(3) The clerk of the court shall, upon the conclusion of proceedings, make a financial return to every person who deposited money or security under a recognizance and return the surplus, if any.

Recognizance binds for all appearances

138.—(1) The recognizance of a person to appear in a proceeding binds the person and his sureties in respect of all appearances required in the proceeding at times and places to which the proceeding is adjourned.

Recognizance binds independently of other charges

(2) A recognizance is binding in respect of appearances for the offence to which it relates and is not vacated upon the arrest, discharge or conviction of the defendant upon another charge.

Liability of principal

(3) The principal to a recognizance is bound for the amount of the recognizance due upon forfeiture.

Liability where sureties

(4) The principal and each surety to a recognizance are bound, jointly and severally, for the amount of the recognizance due upon forfeiture for non-appearance.

Application by surety to be relieved

139.—(1) A surety to a recognizance may, by application in writing to the court at which the defendant is required to appear, apply to be relieved of his obligation under the recognizance and the court shall thereupon issue a warrant for the arrest of the defendant.

Certificate of arrest

(2) When a police officer arrests the defendant under a warrant issued under subsection 1, he shall bring the defendant before a justice under section 134 and certify the arrest by certificate in the prescribed form and deliver the certificate to the court.

Vacating of recognizance

(3) The receipt of the certificate by the court under subsection 2 vacates the recognizance and discharges the sureties.

Delivery of defendant by surety

140. A surety to a recognizance may discharge his obligation under the recognizance by delivering the defendant into the custody of the court at which he is required to appear at any time while it is sitting at or before the trial of the defendant.

Certificate of default

141.—(1) Where a person who is bound by recognizance does not comply with a condition of the recognizance, a justice having knowledge of the facts shall endorse on the recognizance a certificate in the prescribed form setting out,

(*a*) the nature of the default;

(*b*) the reason for the default, if it is known;

(*c*) whether the ends of justice have been defeated or delayed by reason of the default; and

(*d*) the names and addresses of the principal and sureties.

Certificate as evidence

(2) A certificate that has been endorsed on a recognizance under subsection 1 is evidence of the default to which it relates.

(3) The clerk of the court shall transmit the endorsed recognizance to the clerk of the county or district court of the same county or district and, upon its receipt, the endorsed recognizance constitutes an application for the forfeiture of the recognizance. Application for forfeiture

(4) A judge of the county or district court shall fix a time and place for the hearing of the application by the county or district court and the clerk of the county or district court shall, not less than ten days before the time fixed for the hearing, deliver notice to the prosecutor and to each principal and, where the application is for forfeiture for non-appearance, each surety named in the recognizance, of the time and place fixed for the hearing and requiring each principal and surety to show cause why the recognizance should not be forfeited. Notice of hearing

(5) The county or district court may, after giving the parties an opportunity to be heard, in its discretion grant or refuse the application and make any order in respect of the forfeiture of the recognizance that the court considers proper. Order as to forfeiture

(6) Where an order for forfeiture is made under subsection 5, Collection on forfeiture

(*a*) any money or security forfeited shall be paid over by the person who has custody of it to the person who is entitled by law to receive it; and

(*b*) the principal and surety become judgment debtors of the Crown jointly and severally in the amount forfeited under the recognizance and the amount may be collected in the same manner as money owing under a judgment of the county or district court.

Search Warrants

142.—(1) Where a justice is satisfied by information upon oath that there is reasonable ground to believe that there is in any building, receptacle or place, Search warrant

(*a*) anything upon or in respect of which an offence has been or is suspected to have been committed; or

(*b*) anything that there is reasonable ground to believe will afford evidence as to the commission of an offence,

he may at any time issue a warrant in the prescribed form under his hand authorizing a police officer or person named

therein to search such building, receptacle or place for any such thing, and to seize and carry it before the justice issuing the warrant or another justice in the county or district in which the provincial offences court having jurisdiction in respect of the offence is situated to be dealt with by him according to law.

Expiration

(2) Every search warrant shall name a date upon which it expires, which date shall be not later than fifteen days after its issue.

When to be executed

(3) Every search warrant shall be executed between 6 a.m. and 9 p.m. standard time, unless the justice by the warrant otherwise authorizes.

Detention of things seized

143.—(1) Where any thing is seized and brought before a justice, he shall by order,

(*a*) detain it or direct it to be detained in the care of a person named in the order; or

(*b*) direct it to be returned,

and the justice may in the order authorize the examination, testing, inspection or reproduction of the thing seized upon such conditions as are reasonably necessary and directed in the order, and may make any other provision as in the opinion of the justice is necessary for its preservation.

Time limit for detention

(2) Nothing shall be detained under an order made under subsection 1 for a period of more than three months after the time of seizure unless, before the expiration of that period,

(*a*) upon application, a justice is satisfied that having regard to the nature of the investigation, its further detention for a specified period is warranted and he so orders; or

(*b*) proceedings are instituted in which the thing detained may be required.

Application for examination and copying

(3) Upon the application of the defendant, prosecutor or person having an interest in a thing detained under subsection 1, a justice may make an order for the examination, testing, inspection or reproduction of any thing detained upon such conditions as are reasonably necessary and directed in the order.

Application for release

(4) Upon the application of a person having an interest in a thing detained under subsection 1, and upon notice to the

defendant, the person from whom the thing was seized, the person to whom the search warrant was issued and any other person who has an apparent interest in the thing detained, a justice may make an order for the release of any thing detained to the person from whom the thing was seized where it appears that the thing detained is no longer necessary for the purpose of an investigation or proceeding.

Appeal where order by justice of the peace

(5) Where an order or refusal to make an order under subsection 3 or 4 is made by a justice of the peace, an appeal lies therefrom in the same manner as an appeal from a conviction in a proceeding commenced by means of a certificate.

Examination or seizure of documents where privilege claimed

144.—(1) Where under a search warrant a person is about to examine or seize a document that is in the possession of a lawyer and a solicitor-client privilege is claimed on behalf of a named client in respect of the document, the person shall, without examining or making copies of the document,

(*a*) seize the document and place it, together with any other document seized in respect of which the same claim is made on behalf of the same client, in a package and seal and identify the package; and

(*b*) place the package in the custody of the clerk of the court in the jurisdiction of which the seizure was made or, with the consent of the person and the client, in the custody of another person.

Opportunity to claim privilege

(2) No person shall examine or seize a document that is in the possession of a lawyer without giving him a reasonable opportunity to claim the privilege under subsection 1.

Examination of documents in custody

(3) A judge may, upon the *ex parte* application of the lawyer, by order authorize the lawyer to examine or make a copy of the document in the presence of its custodian or the judge, and the order shall contain such provisions as are necessary to ensure that the document is repackaged and resealed without alteration or damage.

Application to determine privilege

(4) Where a document has been seized and placed in custody under subsection 1, the client by or on whose behalf the claim of solicitor-client privilege is made may apply to a judge for an order sustaining the privilege and for the return of the document.

Limitation

(5) An application under subsection 4 shall be by notice of motion returnable not later than thirty days after the date on which the document was placed in custody.

Attorney General a party

(6) The person who seized the document and the Attorney General are parties to an application under subsection 4 and entitled to at least three days notice thereof.

Private hearing and scrutiny by judge

(7) An application under subsection 4 shall be heard in private, and, for the purposes of the hearing, the judge may examine the document and, if he does so, shall cause it to be resealed.

Order

(8) The judge may, by order,

(*a*) declare that the solicitor-client privilege exists or does not exist in respect of the document;

(*b*) direct that the document be delivered up to the appropriate person.

Release of document where no application under subs. 4

(9) Where it appears to a judge upon the application of the Attorney General or person who seized the document that no application has been made under subsection 4 within the time limit prescribed by subsection 5, the judge shall order that the document be delivered to the applicant.

PART VIII

ORDERS ON APPLICATION UNDER STATUTES

Orders under statutes

145. Where, by any other Act, proceedings are authorized to be taken before a court or a justice for an order, including an order for the payment of money, this Act applies, with necessary modifications, to the proceeding in the same manner as to a proceeding commenced under Part III, and for the purpose,

(*a*) in place of an information, the applicant shall complete a statement in the prescribed form under oath attesting, on reasonable and probable grounds, to the existence of facts that would justify the order sought; and

(*b*) in place of a plea, the defendant shall be asked whether or not he wishes to dispute the making of the order.

PART IX

COMMENCEMENT AND TRANSITION

Application

146.—(1) This Act, except Parts I and II, applies to offences in respect of which proceedings are commenced after this Act comes into force.

Idem

(2) Part I and Part II each applies to offences occurring after that Part comes into force.

Repeals

147.—(1) Subject to subsections 2 and 3, the following are repealed:

1. *The Summary Convictions Act*, being chapter 450 of the Revised Statutes of Ontario, 1970.

2. *The Summary Convictions Amendment Act, 1971*, being chapter 10.

Transition

(2) The enactments repealed by subsection 1 continue in force in respect of offences to which this Act does not apply.

Application of subs. 1 to parking infractions

(3) If subsection 1 comes into force before Part II comes into force, the enactments repealed by subsection 1 continue to apply in respect of parking infractions.

Reference to R.S.O. 1970, c. 450

148.—(1) A reference in any Act, regulation or by-law to *The Summary Convictions Act* shall be deemed to be a reference to this Act.

References to summary conviction

(2) A reference in any Act, regulation or by-law to proceeding by summary conviction shall be deemed to refer to the procedures under this Act.

Commencement

149. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

150. The short title of this Act is *The Provincial Offences Act, 1979*.

An Act to amend The Provincial Courts Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 9 of *The Provincial Courts Act*, being chapter 369 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following subsection: s. 9, amended

(1*a*) Where jurisdiction is conferred on a judge, justice of the peace or provincial court, in the absence of express provision for procedures therefor in any Act, regulation or rule, the judge, justice of the peace or provincial court shall exercise the jurisdiction in any manner consistent with the due administration of justice. Where procedures not provided

2. Section 10 of the said Act, as amended by the Statutes of Ontario, 1977, chapter 46, section 1, is further amended by adding thereto the following subsection: s. 10, amended

(1*a*) The chief judge of the provincial courts (criminal division) is chief judge of the provincial offences courts. Chief judge of provincial offences courts

3. The said Act is amended by adding thereto the following section: s. 16*a*, enacted

16*a*.—(1) The rules committee of the provincial courts (criminal division) is established and shall be composed of such members as are appointed by the Lieutenant Governor in Council who shall designate one of the members as chairman. Rules committee

(2) A majority of the members of the rules committee constitutes a quorum. Quorum

(3) The rules committee of the provincial courts (criminal division) is a provincial court (criminal division) for the purpose of making rules of court under the *Criminal Code* (Canada). Rules

R.S.C. 1970, c. C-34

Part II-A (ss. 16*b*-16*f*), enacted

4. The said Act is further amended by adding thereto the following Part:

PART II-A

Provincial offences court

16*b*.—(1) There shall be in every county and district a court of record to be styled,

(*a*) in counties, the "Provincial Offences Court of the County (*or* Judicial District *or* United Counties) of (*naming the county, etc.*)";

(*b*) in districts, the "Provincial Offences Court of the District of (*naming the district*)",

presided over by a judge or justice of the peace.

Jurisdiction

(2) Each provincial offences court has jurisdiction to hear, determine and dispose of,

(*a*) all matters in which jurisdiction is conferred by *The Provincial Offences Act, 1979*; and

1979, c. ...

(*b*) any other matter assigned to it by or under any statute.

Sittings

16*c*.—(1) The provincial offences courts may hold sittings at any place in the county or district designated by the chief judge of the provincial offences courts.

Idem

(2) Where a proceeding in which a provincial offences court has jurisdiction is conducted during the course of a sitting of the provincial court (criminal division) or provincial court (family division) in the same county or district, the proceeding shall be deemed to be conducted in the provincial offences court.

Penalty for contempt

16*d*.—(1) Except as otherwise provided by statute, every person who commits contempt in the face of a provincial offences court is upon conviction liable to a fine of not more than $1,000 or to imprisonment for a term of not more than thirty days, or to both.

Statement to offender

(2) Before proceedings are taken for contempt under subsection 1, the court shall inform the offender of the conduct complained of and the nature of the contempt and inform him of his right to show cause why he should not be punished.

(3) A punishment for contempt in the face of the court shall not be imposed without giving the offender an opportunity to show cause why he should not be punished. Show cause

(4) Except where, in the opinion of the court, it is necessary to deal with the contempt immediately for the preservation of order and control in the courtroom, the court shall adjourn the contempt proceeding to another day. Adjournment for adjudication of contempt

(5) Where a contempt proceeding is adjourned to another day under subsection 1, the contempt proceeding shall be heard and determined by the court presided over by a judge. Adjudication by a judge

(6) Where the court proceeds to deal with a contempt immediately and without adjournment under subsection 4, the court may order the offender arrested and detained in the courtroom for the purpose of the hearing and determination. Arrest for immediate adjudication of contempt

(7) Where the offender is appearing before the court as an agent who is not a barrister and solicitor entitled to practise in Ontario, the court may order that he be barred from acting as agent in the proceeding in addition to any other punishment to which he is liable. Barring of agent in contempt

(8) An order of punishment for contempt under this section is appealable in the same manner as if it were a conviction in proceedings commenced by certificate under Part I of *The Provincial Offences Act, 1979*. Appeals 1979, c. . . .

(9) *The Provincial Offences Act, 1979* applies for the purpose of enforcing a punishment by way of a fine or imprisonment under this section. Enforcement

16*e*. Any person who knowingly disturbs or interferes with the proceedings of a provincial offences court, without reasonable justification, while outside the courtroom is guilty of an offence and upon conviction is liable to a fine of not more than $1,000 or to imprisonment for a term of not more than thirty days, or to both. Penalty for disturbance outside courtroom

16*f*. Subject to the approval of the Lieutenant Governor in Council, the rules committee of the provincial courts (criminal division) may make rules regulating any matters relating to the practice and procedure of the provincial offences courts including, without limiting the generality of the foregoing, Rules for provincial offences courts

(*a*) prescribing forms respecting proceedings in the court;

(*b*) prescribing any matter required to be or referred to as prescribed by the rules of the court;

(*c*) prescribing and regulating the proceedings under any Act that confers jurisdiction upon a provincial offences court or a judge or justice of the peace sitting therein.

s. 27, amended

5. Section 27 of the said Act is amended by adding thereto the following subsection:

Idem

(1*a*) The clerk of a provincial court (criminal division) is the clerk of the provincial offences court of the same county or district.

References to provincial courts (criminal division)

6. Where, in any Act, regulation or by-law, a reference is made to a provincial court (criminal division) in connection with a provincial offence, the reference shall be deemed to be to a provincial offences court.

Commencement

7. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

8. The short title of this Act is *The Provincial Courts Amendment Act, 1979*.

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